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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

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8 DELPHI CORPORATION,

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10 Debtor.

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12 - - - - -x

13 (AFTERNOON SESSION)

14 U.S. Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 May 26, 2006

19 1:38 p.m.

20

21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25

1 MOTION to Authorize Motion For Order Under 11

2 U.S.C. Section 1113(c) Authorizing Rejection

3 Of Collective Bargaining Agreements And Under

4 11 U.S.C. Section 1114(g) Authorizing
5 Modification Of Retiree Welfare Benefits filed
6 by John Wm. Butler Jr. on behalf of Delphi
7 Corporation.

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24 Transcribed By: Pnina Eilberg

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P R O C E E D I N G S

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THE COURT: Please be seated. Okay.

4

Now, we're back on the record in Delphi. You

5

are still under oath sir.

6

THE WITNESS: Okay.

7

MS. MEHLSACK: Your Honor, Ms.

8

Robbins has some follow-up questions before I

9

begin questioning him.

10

MS. ROBBINS: If this is the

11

appropriate time, Your Honor.

12

RE CROSS EXAMINATION BY

13

MS. ROBBINS:

14

Q. The Court asked you a question about most

15

favored nations' clause, when that was

16

initial -- when the union's initial proposal

17

was submitted, the unions being the IAM and

18

the IBEW --

19

A. Right.

20

Q. -- proposal was first submitted to you,

21

Mr. Gerling, back on April 20th and you had a

22

chance to ask questions on the 21st, in terms

23

of the most favored nations clause, you simply

24

indicated that you understood what the

25

union -- where the union was coming from, is

8

1 that right?

2 A. Something like that -- but I knew what
3 the terms are, yes.

4 Q. You didn't have any questions concerning
5 the clause?

6 A. Not particularly, that come to mind.

7 Q. And since then there's really been no
8 discussion, other than the fact that if there
9 were going to be a holiday schedule, you'd
10 want it to be the same for various unions in
11 the same plant?

12 A. I don't remember a specific discussion to
13 that. But on holiday we would want to have
14 everybody the same. We couldn't have one, and
15 we didn't want to have different holiday
16 schedules.

17 Q. And in terms of the IAM, are you aware
18 that they do not have a jobs bank provision in
19 their contract?

20 A. I believe that's correct, yes.

21 MS. ROBBINS: No other questions are
22 prompted by the Court's questions, Your Honor.

23 THE COURT: Okay.

24 CROSS EXAMINATION BY

25 MS. MEHLSACK:

9

1 Q. Good afternoon, Mr. Gerling. Barbara
2 Mehlsack for the operating engineers.

3 A. Good afternoon.

4 Q. We've met before. Now, just -- would you
5 confirm for me what the testimony earlier

6 today that you report to Mr. Kidd, Mr. Kidd
7 reports to Mr. Butler, is that correct?
8 A. Well, I actually have dual reporting
9 relationships. I report to Mr. Kidd and to
10 another person but -- Ms. Polk. But Mr. Kidd
11 then reports up to Mr. Butler who Ms. Polk
12 also reports up to.
13 Q. Who, I'm sorry, and again, I'm having
14 trouble hearing you.
15 A. Am I too far away?
16 Q. Maybe you're too far away now. And who
17 else is it that you report to?
18 A. A woman by the name of Ms. Polk, P-O-L-K.
19 Q. And does Mrs. Polk have any
20 responsibilities for labor relations for the
21 Rochester and Columbus plants?
22 A. Just in the fact that Columbus is part of
23 the thermal and interior division, which is
24 part of my responsibility on a non-bankruptcy
25 type of world, you know.

10

1 Q. I'm sorry?
2 A. So yeah -- so Ms. Polk has responsibility
3 for Columbus as a plant that's within our
4 division.
5 Q. And have you provided any summaries of
6 your negotiations to any of the individuals in
7 the reporting hierarchy, who you've mentioned
8 today?
9 A. Yes, I have. They've been -- the written
10 one's I've submitted have been ever since we

11 met in May. The other ones I had left were
12 voice mail summaries to Mr. Kidd and others,
13 based on the previous meetings I have had with
14 Mr. Glather in Rochester and Mr. Shearer who
15 represents the folks in Columbus.

16 Q. Thank you. And I take it from your
17 declarations that this round of negotiations,
18 1113 negotiations, is the first time you've
19 had any responsibility for operating
20 engineers' contracts or negotiations?

21 A. Well, like I said, the Columbus plant is
22 part of my responsibility on a regular basis.
23 But I have not had the opportunity to deal
24 with them on contract negotiations, because
25 when I took over my other assignment, their

11

1 agreement was already done. And I've not had
2 any previous experience with the group in
3 Rochester.

4 Q. Had you met Mr. Shearer of the operating
5 engineers before meeting him in October of
6 this year -- of 2005, sorry?

7 A. No, I have never met him before.

8 Q. Uh-huh. And have you had -- prior to
9 meeting him, you had no written communication
10 with Mr. Shearer, is that correct?

11 A. I don't believe so. I probably called
12 him on the phone once this process got
13 started, but I don't -- I'm not remembering
14 any.

15 Q. And you never submitted any proposals to

16 him directly, prior to October?

17 A. Not that I'm aware of.

18 Q. And, in fact, until the last couple of

19 days, you've never submitted any proposals at

20 all to Mr. Shearer?

21 A. Well, I guess I'd go back to the

22 documents that I gave him in October and then

23 in November. Those are certainly Delphi's

24 proposals relative to the bankruptcy process.

25 Q. Now, are those the October modifications

12

1 and then the November, the competitive

2 benchmark proposals?

3 A. Yes.

4 Q. And the first time you gave them to Mr.

5 Shearer were when you met with him in October,

6 is that correct?

7 A. That's correct, yes.

8 Q. And Mr. Shearer is the business agent for

9 Local 18S, is that correct?

10 A. Yes.

11 Q. And that's the Local that represents the

12 operating engineers in the Columbus facility?

13 A. That's correct.

14 Q. All right. Now, is it -- the first time

15 that you met Mr. Glather was also in October

16 when you presented him with the October

17 proposals?

18 A. That's correct.

19 Q. And Mr. Glather is the business agent for

20 the Rochester Local, is that correct?

21 A. That's correct.

22 Q. And it is the case, is it not, that these

23 are two separate contracts, two separate

24 Locals that bargain and historically have

25 bargained separately?

13

1 A. As far as I know that's correct.

2 Q. Mr. Gerling is it -- is it your testimony

3 today that your declaration and your

4 supplemental declaration accurately and

5 completely summarize the status of the

6 negotiations with each of the operating

7 engineer's Locals as of the date of your

8 supplemental declaration, which is May 23rd?

9 A. Yes.

10 Q. You've read Mr. Shearer's declaration?

11 A. I've read one of them, yes.

12 Q. And you've -- which one --

13 A. I don't know if he's submitted more than

14 the one.

15 Q. He's submitted a supplemental declaration

16 as well.

17 A. Okay.

18 Q. But you've not --

19 A. I don't know that I've read that one.

20 I've read the first one.

21 Q. Would you -- well, would you turn to --

22 and you'll bear with me --

23 MS. MEHLSACK: Withdraw that

24 question.

25 Q. Would you agree with the statement, Mr.

14

1 Gerling, that prior to these negotiations the
2 pattern at Delphi for the operating engineers
3 was, that Delphi reached an agreement with the
4 UAW at both the national and Local level, and
5 then presented the results of that agreement
6 to the Local and began negotiations at the
7 Local level?

8 A. That's my understanding, yes.

9 Q. Okay. And that basically the pattern of
10 bargaining was that most, if not all, of the
11 economic terms that were reached with the UAW
12 were then offered to the various Local unions.
13 And then negotiations on Local plant issues
14 preceded at -- after that offer was made to
15 the Local unions?

16 A. That's my understanding, yes.

17 Q. Did Delphi ever negotiate with the
18 international union of operating engineers
19 over the terms of the operating engineers
20 bargaining units?

21 A. I don't know that they have.

22 Q. You never have?

23 A. No, I've --

24 Q. And you have not in this case?

25 A. No.

15

1 Q. And the agreements between the Locals and

2 Delphi are agreements with the Locals, is that
3 correct? Not with the internationals?
4 A. I'm not sure how the actual document
5 reads, but it's with that Local. And that
6 Local is part of the international operating
7 engineers' international group.
8 Q. So you're not sure how each of the
9 contracts between Local 18S and Delphi and
10 Local 832S and Delphi read?
11 A. The cover page, I don't, off the top of
12 my head.
13 Q. What about the signature pages? Do you
14 know who signs the documents?
15 A. The business agent and the -- usually the
16 chief steward with the Local management. And
17 there may have been -- the Chief steward and
18 the business agent.
19 Q. And who, historically, has negotiated
20 those contracts, in terms of the individuals
21 on each side? Do you know?
22 A. Typically it is the Local plant
23 management with the chief steward and the
24 business agent.
25 Q. Okay. And who is the Local plant

16

1 management at Columbus?
2 A. Currently, the personnel director is a
3 gentleman by the name of Jim Barr.
4 Q. And is that -- is Mr. Barr the only
5 person who's responsible for the negotiations
6 at the Local plant level with the --

7 A. There's a supervisor --
8 Q. -- operating engineers?
9 A. There's another gentleman there, David
10 Cox.
11 Q. And Rochester?
12 A. The personnel director there is a
13 gentleman by the name of Ed Peet, P-E-E-T.
14 And the supervisor of labor relations is a
15 gentleman by the name of Carlton Smith.
16 Q. Now, when you met with --
17 MS. MEHLSACK: Withdrawn.
18 Q. At some point in October you made an
19 arrangement to present the October proposals
20 to the Columbus plant, is that correct?
21 A. Yes.
22 Q. Okay. And you contacted Mr. Struckman
23 about that presentation, is that correct?
24 A. No. I think I contacted both Mr. Shearer
25 and Mr. Struckman. When I had the meeting Mr.

17

1 Shearer was unable to make it and I made
2 arrangements to meet him afterwards. But I
3 presented the information to Mr. Struckman who
4 is the chief steward. And then, when Mr.
5 Shearer was available I presented it to him.
6 Q. And that's because you had given --
7 called up on one day's notice and Mr. Shearer
8 had a previous engagement and couldn't make
9 it.
10 A. I don't remember the timing, but he
11 certainly had a previous engagement, that's

12 correct.

13 Q. And you then met with Mr. Shearer to
14 present those proposals to him and explain
15 that -- them to him, correct?

16 A. That's correct. There was also some
17 financial information that went along with the
18 package.

19 Q. And you understood that negotiations
20 would have to occur with the Local plant
21 people present, is that correct? When it
22 comes to the Columbus --

23 A. We surely wanted to have -- Mr. Shearer
24 wanted to have Mr. Struckman involved.

25 Q. And did there come a time that you met

18

1 with Mr. Shearer in November to present the
2 November proposals to him?

3 A. That's correct.

4 Q. And the purpose of that meeting was,
5 again, also to present the information about
6 the proposals?

7 A. That's correct.

8 Q. Did you come -- did there come -- and at
9 that point in time there had been no attrition
10 package presented to the operating engineers,
11 is that correct?

12 A. In the time frame of November?

13 Q. Of October and November.

14 A. That's correct.

15 Q. And subsequent to that timeframe was when
16 Delphi withdrew the competitive benchmark

17 proposals, is that correct?

18 A. The October and November proposals?

19 Q. The October and November proposals.

20 A. That's correct. They were withdrawn in

21 December, I believe.

22 Q. And the next time that you had contact

23 with the operating engineers, I believe, was

24 on March 22nd when you called Mr. Shearer to

25 let him know that you would have an attrition

19

1 proposal for him?

2 A. That we were preparing one for them

3 similar to how we did with the UAW, that's

4 correct.

5 Q. And Mr. Shearer -- am I correct that Mr.

6 Shearer told you that, if you're going to

7 present the proposal and negotiations were

8 going to begin, he wanted it -- the meeting to

9 be at the plant so that Mr. Struckman could be

10 present?

11 A. He had said that previously so I believe

12 he probably said something along those lines.

13 Q. Okay. So you were very clear that for

14 negotiations to take place, it would have to

15 be at the plant where Roger Struckman could be

16 -- could be present.

17 A. He wanted to have Roger present, that's

18 correct.

19 Q. Uh-huh. Now, you subsequently cancelled

20 that meeting is that correct? Because --

21 A. Because we did not have an attrition

22 program, that's correct.

23 Q. Now, were you present when Mr. Butler
24 testified that there came a point in time when
25 the Delphi and the UAW agreed to -- it's been

20

1 called the two-step process, sometimes a
2 three-step process, that is a process by which
3 an attrition agreement would be reached first.
4 Then there would be negotiations to deal with,
5 what's been called the footprint. In other
6 words, the employee compliments, the effects
7 of the attrition proposal. And the third step
8 would be wages and benefits and other terms
9 and conditions of employment?

10 MR. JERMAN: Objection, Your Honor,
11 insofar as she's characterizing the testimony,
12 but no objection to the fact that he was
13 present when Mr. Butler testified.

14 THE COURT: All right.

15 Q. Were you present when Mr. Butler
16 testified?

17 A. Yes.

18 Q. Are you familiar with what's called the -
19 - what's been called -- what Mr. Butler called
20 the two-step and sometimes, I believe, the
21 three-step process?

22 A. I've heard the terms used, yes.

23 Q. Okay. Do you understand what they mean?

24 A. Yes.

25 Q. And what do they mean to you?

21

1 A. That they would be done in sequence of
2 events. One would be the attrition program
3 and then the other two elements, essentially,
4 would happen individually.

5 Q. An attrition program would be agreed to
6 first. And is the reason for -- that's so
7 that there could be an assessment made of what
8 employees would be left at the various plants,
9 is that correct?

10 MR. JERMAN: Objection. That
11 mischaracterizes Mr. Butler's testimony.

12 THE COURT: Well --

13 MS. MEHLSACK: I'm asking if that's
14 correct, Your Honor. I mean, he can tell me
15 that's not correct.

16 MR. JERMAN: Your Honor, this was
17 discussions with the UAW, he was not involved
18 in those discussion.

19 MS. MEHLSACK: I'm asking him, Your
20 Honor, if his understanding of that process,
21 two or three-step process, if it -- if he does
22 not understand it the way I described it, he
23 can tell me he doesn't understand it that way.

24 THE COURT: Well, is this -- I guess
25 -- is the questioning going on how this

22

1 relates to the witness's own testimony?

2 MS. MEHLSACK: Yes.

3 THE COURT: With regard to this --

4 MS. MEHLSACK: And I -- this is a
5 foundation, Your Honor.

6 THE COURT: Rather than just whether
7 he was paying attention in court the other
8 day? I'm just trying to figure out the --

9 MS. MEHLSACK: No, it's to -- well,
10 let me -- Your Honor, it's to get the
11 witness's understanding of the process and
12 whether the witness has ever been instructed
13 to follow the same process --

14 THE COURT: All right.

15 MS. MEHLSACK: -- with the operation
16 engineers.

17 THE COURT: Fine, you could ask --
18 you could ask that question.

19 Q. Had you, Mr. Gerling, been instructed or
20 advised by your superiors to follow that same
21 two or three-step process with the operating
22 engineers?

23 A. No.

24 Q. When was the first time you made an
25 attrition proposal to the operating engineers?

23

1 A. Wednesday of last week. Whatever date
2 that was, I'm not sure.

3 Q. Uh-huh. And that attrition proposal is
4 conditioned on the operating engineers
5 accepting the GM consensual proposals, is it
6 not?

7 A. It was an addendum to the March proposal.
8 And during that meeting I said, if we could

9 come to terms on the entire package, we would
10 remove the GM contingencies and Delphi would
11 fund it without any GM support.

12 Q. So that --

13 A. Delphi would fund the program without any
14 GM financial support.

15 Q. And by coming to terms on the entire
16 package, you meant coming to terms on the GM
17 consensual proposals, is that correct?

18 A. Is that the March proposal? I just want
19 to make sure. There's all sorts of different
20 ones. I refer to them by dates.

21 Q. I fully appreciate your confusion, Mr.
22 Gerling.

23 A. The March proposal was the one that we
24 would agree to terms upon.

25 Q. The March proposal?

24

1 A. Yes.

2 Q. And is -- bear with me a moment, please.
3 Is the attrition proposal that you offered to
4 the operating engineers, now is that --

5 MS. MEHLSACK: Question withdrawn.

6 Q. Did you with -- make the same proposals
7 to both Mr. Glather and Mr. Shearer?

8 A. Yes.

9 Q. Okay. And does that proposal contain a
10 buyout program?

11 A. The attrition package, that was an
12 addendum, did not have a buyout proposal. It
13 was part of the original March proposal that I

14 subsequently gave them information on. Or it
15 may even have been contained in. The 140 and
16 70, I assume is what you're referring to,
17 correct?

18 Q. The 140, 70.

19 A. Yeah. That was not in the attrition
20 package. It was part of the original March
21 proposal.

22 Q. It was part of the original March
23 proposal. And in March it was contingent on
24 GM funding, is that correct?

25 A. Correct.

25

1 Q. But when you offered the attrition
2 proposal, is it your -- am I understanding you
3 correctly, that what you were offering was, if
4 you make a deal, if we come to an agreement on
5 the overall proposal, the buyout program and
6 the attrition program will no longer be
7 contingent on GM funding.

8 A. That's correct.

9 Q. Now, the attrition proposal itself was
10 a -- the proposal to, in effect, bridge a
11 three year of service gap for anyone who had
12 27 years of service --

13 A. Uh-huh.

14 Q. -- in Delphi as of a certain date?

15 A. Uh-huh. Yes, I'm sorry.

16 Q. Okay. Do you know what the service
17 accruals are for the various employees at the
18 Columbus plant?

19 A. On individual names, no. But I remember,
20 in general, eleven of the thirteen would be
21 eligible for one of the options of the
22 retirement program that we offer. And four of
23 the six would be eligible for one of the
24 programs in Rochester. How much service each
25 individual had, I don't recall.

26

1 Q. When you say eleven of the thirteen would
2 be eligible for the options, you're including
3 the buyout option --

4 A. No.

5 Q. Now, it's your understanding --

6 MR. JERMAN: Objection, Your Honor.

7 THE COURT: He didn't finish his
8 answer to that one.

9 MS. MEHLSACK: Okay.

10 Q. Is it -- are you including --

11 THE COURT: I'm sorry. You
12 should --

13 MS. MEHLSACK: Okay. I'm sorry.

14 THE COURT: You should let him
15 answer your first -- the first part of your
16 question.

17 MS. MEHLSACK: I'm sorry.

18 A. The eleven of the thirteen would -- as I
19 recall, qualified for either the normal or
20 early retirement option, the MSR or the pre-
21 retirement program.

22 Q. And so, when you say the normal or early
23 retirement, you're talking about the ten year

24 -- ten years, age fifty program?

25 A. No, that's the MSR.

27

1 Q. And that's the MSR, I apologize.

2 A. That's okay.

3 Q. The ten -- the MSR is the ten years and

4 age fifty?

5 A. Yes.

6 Q. And --

7 A. Do you want me to explain -- do you want

8 me to try and explain it, or you got it?

9 Q. And the normal is age sixty-five?

10 A. With seniority.

11 Q. With seniority. And the early is the --

12 you're referring to the bridging -- no, the --

13 A. No.

14 Q. -- the early retirement is age fifty-five

15 and how many years of service?

16 A. No, it's age sixty with ten years of

17 service. Eighty-five points which is a

18 combination of age and credited service, or

19 thirty years of credited service would qualify

20 for an early retirement.

21 Q. Okay. And two of those employees would

22 not qualify for any of those options?

23 A. I believe that's correct.

24 Q. Okay. And what is the -- it is -- Delphi

25 proposes to close the Columbus facility, is

28

1 that right?

2 A. That's correct.

3 Q. And you've advised Mr. Shearer and Mr.
4 Struckman of that?

5 A. I believe I have, yes.

6 Q. So, of the -- two of those employees,
7 with the facility to be closed, would have no
8 options under the attrition program?

9 A. From a retirement standpoint, that's
10 correct. They would be -- they qualify for
11 the buyout piece.

12 Q. They would -- their only option would
13 then be under the buyout?

14 A. Correct.

15 Q. Now, in your -- do you have your
16 declaration -- your supplemental declaration
17 in front of you?

18 A. I don't think so.

19 Q. If you could, it's 280. Now if you refer
20 to paragraph 12, where you say -- let's start
21 with the first sentence. On May 17th you got
22 a counterproposal from the operating engineers
23 Local 18S, is that correct?

24 A. Mr. Shearer handed me responses to
25 several of the items and we discussed them,

29

1 yes.

2 Q. And that counterproposal contained
3 several concessions including a willingness to
4 -- agreement to give up COLA, limitation on

5 holidays, reduced shift premium, is that
6 correct?
7 A. I believe that's correct.
8 Q. All right. Well, if you don't, would you
9 -- I'd refer you to Exhibit 291.
10 A. My book goes 290 to 292.
11 Q. Is that a correct copy of the proposals
12 that you received on May 17th?
13 A. Yes. Yes, it is. Yes, it is.
14 Q. Now, in paragraph 12 you referred to
15 your -- you say, "I also discussed with the
16 IUOE representatives the same approach that
17 Delphi offered to the IAM and IBEW, with
18 regard to receiving the same agreement entered
19 into by the UAW." Now, I'm going to refer you
20 back to your paragraph 8, because I'm going to
21 ask you, when you talk about the same
22 approach, are you talking about the approach
23 that you describe in paragraph 8, in which you
24 say, "Delphi also offered to approach
25 negotiations with the IBEW and IAM in a

30

1 different manner. Similar to the proposal
2 previously extended by counsel, under which
3 the IAM and IBEW represented employees would
4 be provided the same terms and conditions,
5 eventually negotiated with the UAW." So your
6 paragraph -- am I correct that your statement
7 on paragraph 12 is referring to the same
8 approach. It's the approach based on the e-
9 mail that was sent to me and to Ms. Robbins on

10 May 8?

11 A. That's correct.

12 Q. Okay. And that -- and that e-mail, you -

13 - you've read that e-mail?

14 A. I've read it, yes.

15 Q. Okay. And that e-mail asked the

16 operating engineers and the IBEW to remove

17 themselves from this process and agree to

18 accept whatever results were arrived at

19 through the process, for the UAW. That is, if

20 this court should decide to approve rejection,

21 our cut -- the IUOE contracts would be

22 rejected. If there was an agreement reached

23 with the UAW, that agreement would be imposed

24 upon the operating engineers, subject -- well,

25 I'm not sure that whether it was subject to

31

1 ratification. And that with the exception,

2 however, that there would be no GM benefit

3 guarantees and no flow-back rights?

4 A. I believe that is correct.

5 Q. And that was what you offered in the --

6 in your initial May meetings to the operating

7 engineer Locals, is that correct?

8 A. We discussed that.

9 Q. Okay. Well --

10 A. Yeah. Yeah. They knew it.

11 Q. Okay. You have a statement that the

12 operating engineers expressed interest in this

13 approach. Isn't it the case that only Mr.

14 Glather expressed an interest in the approach

15 and not Mr. Shearer?

16 A. Mr. Shearer didn't say. He had

17 provisions of his agreement that were me --

18 what I would call me too, which were patterned

19 after that. But he had presented me

20 proposals. Charlie also made a note, not --

21 sorry, Mr. Shearer also made proposals that

22 said, we'll do whatever everybody else wants

23 because we're not going to do any better. To

24 me that indicated an interest in going with

25 the pattern approach.

32

1 Q. Well would you -- would you read please -

2 - would you turn back to Exhibit 291?

3 A. Yes.

4 Q. And are you referring to -- I'm sorry, I

5 have to go to -- I guess it's not in the

6 confidential binder. And are you referring to

7 the -- is there something in this May 17th

8 proposal that talks to what you are referring

9 to as a me-too approach?

10 A. When we talk -- walk through the term

11 sheets, and we talked about each individual

12 element -- are you going to ask another

13 question, or do you want me to go on?

14 Q. Finish your answer.

15 A. Okay. As we discussed it and we walked

16 through the term sheets, there were elements

17 that -- and specifically health care was one

18 that Mr. Shearer said, we'll take what

19 everybody else takes.

20 Q. I'm --

21 A. We walked through every element in the
22 term sheet.

23 MS. MEHLSACK: Your Honor, I'm going
24 to move to strike, because that was not
25 responsive to my question. I asked if there

33

1 was anything in this proposal, on May 17th,
2 that has a -- what Mr. Gerling characterizes
3 as a me-too approach.

4 THE COURT: Was the term sheet
5 you're referring to the May 17th?

6 THE WITNESS: The March proposal,
7 sir.

8 THE COURT: Okay. No, she should
9 ask a specific question.

10 A. Okay. In this -- in this document here,
11 there's nothing that references me-too.

12 Q. Now, when you went through the term
13 sheet, Mr. Shearer indicated to you that there
14 were certain specific items --

15 A. Uh-huh.

16 Q. -- that he would want to be able to do at
17 least as well as the other unions, is that
18 correct? And that's what you're
19 characterizing as a me-too approach?

20 A. No. In some he said he couldn't -- he
21 wouldn't be able to do any better so he'd just
22 take whatever we gave him. And that was
23 specifically health care. There were other
24 elements that he talked about -- he wouldn't

25 be able to do any better so he would do the

34

1 me-too there, like holidays. He knew he
2 wasn't going to get more or less.
3 Q. Well, but in fact, Mr. Shearer gave you a
4 specific proposal in agreement to reduce
5 holidays?
6 A. He agreed to reduce holidays, that's
7 right.
8 Q. And he gave you a specific proposal to do
9 away with COLA, is that correct?
10 A. That's correct.
11 Q. Let's go through -- after the May 17th
12 proposal, did you have subsequent negotiations
13 with Mr. Shearer and Mr. Struckman?
14 A. I did not meet with them further because
15 I was meeting with the operating engineers in
16 Rochester and then with the IAM IBEW in
17 Milwaukee the following days. But Mr. Barr
18 and Mr. Cox met with Mr. Struckman and Mr.
19 Shearer, although Mr. Shearer wasn't available
20 on all days, because he had prior commitments.
21 Q. In fact, was there not a meeting on
22 Saturday the 20th between Mr. Barr and Mr.
23 Struckman and Mr. Cox?
24 A. I believe there was.
25 Q. And that meeting resulted in a document

35

1 that was signed by plant -- by Mr. Cox, I

2 believe, and by Mr. Struckman?

3 A. I haven't seen a signed copy. But I do
4 remember seeing that there was a document on
5 the elements that they talked about in that.

6 Q. And you haven't seen the signed copy?

7 A. No, but I've seen the -- I've seen a copy
8 of it that was sent, but I don't have a signed
9 copy.

10 Q. Well, would you turn to Exhibit 295,
11 please?

12 A. Okay. I have it.

13 Q. Again, not in the confidential binder.
14 And that -- I'm sorry, I will correct my
15 statement. That document is signed by Mr.
16 Barr for Delphi, right? And Mr. Struckman
17 for --

18 A. Uh-huh.

19 Q. -- the operating engineers?

20 A. Yeah.

21 Q. And that document reflects an
22 understanding at the plant level, is that not
23 correct? Subject to approval by Delphi
24 corporate labor relations and the operating
25 engineers' business agent?

36

1 A. That's correct.

2 Q. And that document reflects an agreement
3 to both waive GM support contingency language
4 and maintain the buyout of the 140,000, 70,000
5 dollar buyout, is that correct? If you look
6 at page one --

7 A. Oh, I see the buyout provisions.

8 Q. And do you see the waived GM support

9 contingency language?

10 A. I see that. Yes, I do.

11 Q. Okay. Subsequent to your receiving that

12 document, Mr. Gerling, did you send another

13 proposal to the operating engineers' Local

14 18S?

15 A. The one yesterday that I reviewed with

16 Mr. Shearer.

17 Q. And nothing was sent prior to yesterday?

18 A. I'm -- prior to yesterday? I'm not aware

19 of any. I mean --

20 Q. So you're not aware of the fact that Mr.

21 Barr sent Mr. Shearer a proposal on May 23rd?

22 A. If he sent one, I'm not aware of that.

23 No, I'm not.

24 Q. Would you take a look at Exhibit 300?

25 A. Oh. Okay.

37

1 Q. Now, were you aware that that proposal

2 was sent by Mr. Barr to Mr. Shearer?

3 A. Yeah. I was -- I was thinking of a new

4 term sheet proposal, I'm sorry for my

5 mischaracterization.

6 Q. Okay.

7 A. This is the medical information that we

8 reviewed. And there should be some pension

9 stuff in here as well. We reviewed with him

10 and Mr. Glather Friday morning the 20th, I

11 believe.

12 Q. I'm sorry. I may have -- I may have
13 referred you to the wrong number and I
14 apologize. It's very confusing as to what's
15 in the confidential binder and what's not.
16 And what the rationale is for it being one way
17 or the other. Okay. I apologize, Mr.
18 Gerling.
19 A. It's okay.
20 Q. I actually mean to refer you to Exhibit
21 301, which is not in the confidential -- which
22 is in the confidential binder.
23 A. Okay.
24 THE COURT: No, it's not.
25 Q. And is it -- have you seen that document?

38

1 A. I've not seen it with these me-too
2 provisions put in it.
3 Q. Well, do you know that -- that -- those
4 me-too provisions were put in by Mr. Barr?
5 MR. JERMAN: Objection, foundation,
6 if he hasn't seen it.
7 THE COURT: You should --
8 MS. MEHLSACK: But that doesn't mean
9 he doesn't know.
10 Q. Do you know who put in those me-too
11 provisions?
12 A. No, I don't.
13 Q. Okay.
14 THE COURT: Well, okay fine.
15 MS. MEHLSACK: I'm sorry, Your
16 Honor, I didn't hear you, Your Honor. I

17 apologize.

18 THE COURT: You don't need to hear
19 me -- he doesn't know.

20 Q. And that -- that proposal of the 23rd --

21 THE COURT: Well, he -- if you're
22 going to actually pass that as a question, you
23 have to lay some foundation. Because he said,
24 so far there's no real --

25 Q. Well, do you know -- do you know that

39

1 that was sent by Mr. Barr to Mr. Shearer, or
2 you don't know that as well?

3 A. I'm not aware of that either.

4 Q. So that as far as you know, between the
5 May 20th plant level agreement and today, the
6 next time that there was any bargaining at the
7 Columbus facility was when you sent a
8 proposal -- the March 25th proposal to Mr.
9 Shearer?

10 A. Well, I know -- I know I sent -- I faxed
11 him the copy last night and we walked through
12 it. Now, I'm recalling that Mr. Shearer
13 thought -- I'm -- get my dates right. He was
14 available to go to Columbus on the 23rd.

15 I'm -- because his schedule was, kind of,
16 committed to. So, I believe he was in
17 Columbus on the 23rd, but I was not in
18 Columbus on the 23rd.

19 Q. And you don't know what happened in
20 Columbus on the 23rd, is that the case?

21 A. No, I don't. That's correct.

22 Q. Because neither Mr. Barr nor Mr. Cox have
23 told you what happened on the 23rd?
24 A. I can't recall that they gave me any
25 update.

40

1 Q. So, last night --
2 A. Well, can I --
3 Q. Yeah.
4 A. -- add on to that?
5 Q. Well, no. There's no question.
6 THE WITNESS: Your Honor, may I
7 THE COURT: Well, if it's for his --
8 in response to that last question?
9 THE WITNESS: Yes. Yeah.
10 THE COURT: Okay. Go ahead.
11 Q. I'm sorry, I couldn't hear you.
12 A. Yes, it is. Because when I met -- I have
13 to take a step back to the Wednesday meeting
14 with Mr. Struckman and Mr. Shearer, that I
15 informed them that I would be having further
16 dialogue with the IAM and the IBEW. And that
17 one of my associates, Mr. McQuee, would be
18 working with them in my absence because I
19 couldn't physically be in Columbus and
20 Rochester and Milwaukee all at the same time.
21 Q. But again, you -- understood. But you --
22 so but the next time -- the next time a
23 proposal was sent to the operating engineers
24 was the May 25th document that was sent last
25 night?

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1 A. I sent that last night. It's the one I'm
2 aware of.

3 Q. Okay. And that is Exhibit 316, am I
4 correct?

5 A. I don't know what exhibit.

6 Q. Would you turn -- that is Exhibit 316.
7 Would you please turn to that exhibit? And
8 you'll forgive me if I ask, what may seem a
9 number of stupid questions, since I just got
10 that document this morning. And I gather it
11 had not been sent to Mr. Struckman as of
12 yesterday. Because Mr. Struckman had to leave
13 the plant, is that correct?

14 A. Yeah. Mr. Struckman left at 4:00. They
15 were going to review it with him this morning.

16 Q. Okay. Now that is the, what's called
17 pattern bargaining proposal, is that correct?

18 A. I just like to refer to it by the date.
19 May 25th proposal, yes. That's the pattern
20 treatment, yes.

21 Q. Okay. And that proposal -- is that
22 proposal that offers to the operating
23 engineers' retiree health insurance comparable
24 to that of the salaried employees?

25 A. This proposal has that in it, yes.

42

1 Q. And is that the first time that is
2 offered to the operating engineers?

3 A. When I talk to -- in written form, yes.

4 Charlie had indicated, like I said -- I'm
5 sorry. Mr. Shearer had indicated previously,
6 as had Mr. Glatther, they would take whatever
7 was offered because they wouldn't be able to
8 do any better. It's the first time I put it
9 in writing. You're absolutely correct.

10 Q. So on May 23rd there were no 1114
11 proposals that had been put before the
12 operating engineers, is that correct?

13 A. The -- prior to -- I'm sorry, the date
14 May 23rd?

15 Q. No. Prior -- on -- as of May 23rd, there
16 were no retiree health care proposals
17 comparable to the salaried -- treatment of
18 salaried employees on the table to the
19 operating engineers, is that correct?

20 A. With respect to the operating engineers,
21 they had told me that they would --

22 MR. JERMAN: Objection.

23 MS. MEHLSACK: Your Honor, I'm going
24 to ask that the answer be struck. My question
25 called for a simple yes or no answer.

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1 MR. JERMAN: Your Honor, he didn't
2 even complete his answer. So we don't know
3 what he was going to say.

4 THE COURT: Well, I think the -- in
5 your question, are you saying written
6 proposals or -- is that what you mean when you
7 say proposals on the table, you mean written,

8 formal proposals?

9 MS. MEHLSACK: There were no written
10 proposals to the operating engineers offering
11 them health care comparable, or what Delphi is
12 characterizing as health care comparable, to
13 the salaried employees.

14 THE COURT: Okay.

15 THE WITNESS: In writing, no.

16 THE COURT: Okay.

17 Q. And Mr. Gerling, that March -- that May
18 25th proposal --

19 A. Uh-huh.

20 Q. -- the buyout provisions are struck from
21 that proposal, is that correct?

22 A. They have the -- they're struck with the
23 pattern treatment added in, yes.

24 Q. Okay. And pattern treatment means, in
25 the context of the buyout proposals that

44

1 whatever is offered to the UAW, whatever that
2 may be, will be offered to the operating
3 engineers?

4 A. With respect to the buy -- yeah. For
5 that element, yes.

6 Q. Okay. However, the operating engineers
7 do not have the GM benefit guarantees, is that
8 correct?

9 A. As far as I know, that's correct.

10 Q. Uh-huh. And that pattern proposal has no
11 specific wages in it, is that correct?

12 A. They would -- they would get whatever the

13 UAW -- so the proposal was withdrawn, or
14 struck through and they would accept the
15 pattern treatment.
16 Q. So that virtually every paragraph and
17 it's not the case that every paragraph,
18 virtually every paragraph is struck through
19 and the operating engineers are being asked to
20 accept the proposal that says, we will get
21 whatever the UAW may get with several
22 exceptions, however. Is that not the case?
23 A. Yeah, because of the retiree healthcare.
24 Yes, that's correct. There are exceptions to
25 the pattern.

45

1 Q. Okay. And what are those exceptions, if
2 you want to --
3 A. The pension piece, the ISP, active or --
4 I'm sorry, retiree health care, it says in the
5 beginning here -- pensions representation,
6 OPEB, the addendum to the special attrition
7 program and the income security plan. There
8 are a couple provisions that we've removed as
9 well that didn't apply to the operating
10 engineers.
11 Q. So this special attrition program will
12 not be patterned after the UAW special
13 attrition program?
14 A. They would do their own because, as we
15 talked in our meeting of the 17th, it would be
16 similar. We discussed moving the dates around
17 to coincide the departure of employees with

18 the closing of the facility.
19 Q. Would that be the only difference?
20 A. No, there was -- they don't have -- since
21 they don't have flow-backs or the benefit
22 guarantee there was no check the box option.
23 Q. Okay. And is not also the case that
24 there's no provision for a special fund to be
25 set up --

46

1 A. That's correct.
2 Q. -- to insure the payment of those
3 benefits.
4 A. There is no special fund set up.
5 Q. Now is -- was that proposal -- has that
6 proposal been offered to Mr. Glather yet?
7 A. Which one? May 25th?
8 Q. The pattern bargaining proposal?
9 A. Mr. Glather was having some medical
10 treatment done yesterday. So, he told me he
11 would be unavailable on Thursday when I talked
12 to him on Wednesday. I've e-mailed him the
13 proposal. And Mr. Peet, in Rochester,
14 reviewed it with the chief steward and another
15 member of the bargaining committee this
16 morning.
17 Q. And let me -- returning to that proposal,
18 there's another exception for pattern
19 treatment as well. And that's for the defined
20 contribution plan, is there not?
21 A. Yes. I said pension earlier, but that's
22 what I meant.

23 Q. You encompassed that. And that is
24 because -- has there been a percentage offered
25 to the operating engineers for the defined

47

1 contribution plan?
2 A. It's a five percent base contribution and
3 a hundred percent match on two and a half
4 percent of the employees' contribution.
5 Q. And the UAW offer is the seven and half
6 percent offer, is that not the case?
7 A. But that adds up to seven and a half
8 percent.
9 Q. Now the UAW piece -- the Delphi piece,
10 instead of five percent, the UAW piece is the
11 seven and half percent, is it not?
12 A. I just think were splitting hairs. It's
13 the five percent match -- base contribution by
14 the company and then a two and a half percent
15 match on the employees' contribution. That
16 adds up to the seven and half percent.
17 Q. And I -- it's my understanding, and
18 perhaps I'm wrong. That the base contribution
19 without a match is seven and a half percent
20 for the UAW?
21 A. I'm not aware of that.
22 Q. Now, you've received, and I apologize
23 it's not an exhibit yet, you've received
24 another counterproposal from Mr. Shearer, is
25 that not correct? Actually you may not have

1 received it because --

2 A. Okay. Because I'm not aware of one. I
3 mean, when we finished talking last night he
4 did not send me anything. But that doesn't
5 mean -- I've not been in my normal office, so
6 he may have sent something to my regular
7 office. I haven't received anything, no.

8 MS. MEHLSACK: Question withdrawn at
9 the risk of testifying. Because I haven't
10 seen it yet either. I just -- my
11 understanding that --

12 THE WITNESS: I've been here with
13 you all day, so --

14 MS. MEHLSACK: -- that it's been
15 sent to you.

16 Q. Mr. Gerling, what is the intention --
17 Delphi's intention with respect to the
18 Rochester facility?

19 A. The Rochester facility has been
20 designated as a plant that will stay open, be
21 retained.

22 Q. Okay. And is it not the case that -- and
23 I believe you testified that it's your
24 understanding that four out of the six
25 employees at that -- stationary engineers,

1 will be eligible to take an attrition package?

2 A. That's correct.

3 Q. And at the Columbus facility, you said

4 that it's your understanding that eleven out
5 of the thirteen employees would be eligible to
6 have some form of retirement package?
7 A. Yes.
8 Q. Okay. Is it not the case that you told
9 Mr. Shearer that Delphi wants to have control
10 over who selects the retirement package and at
11 what points in time; so that you can insure
12 that there is a sufficient number of
13 experienced stationary engineers remaining at
14 the facility?
15 A. I don't know if I used those --
16 MR. JERMAN: Objection, compound.
17 MS. MEHLSACK: I think he was having
18 no trouble answering the question.
19 THE COURT: Well, can you --
20 separate your question?
21 Q. Is it not the case that you told Mr.
22 Shearer that Delphi wants to control the
23 timing and identity of who selects the
24 retirement packages?
25 A. What we talked about, and what I talked

50

1 to Mr. Shearer about, was that since the plant
2 was going to stay open -- I'm sorry. And
3 we're talking about Columbus. Since the plant
4 was going to close at the end of December
5 2007, it would be our preference to have the
6 employees work up until the time the plant
7 closes, unlike the UAW where the people all
8 left in 2006. A powerhouse operation is one

9 where it's all on or it's all off. If I were
10 to let one or two people go, I'd have to find
11 a way to replace them. And so the fact is, is
12 that we thought it would be best to have
13 people work up until the closure. Now, if
14 there was a way to let people go and we could
15 still run the powerhouse without that, we
16 would work through that. But the fact is, a
17 powerhouse runs seven days a week, twenty-four
18 hours a day. And it's either all on or it's
19 all off. So you can't run with six guys. And
20 the way they're set up, unlike in Rochester,
21 they're just set up different.

22 Q. And in the case -- you're referring now
23 to the Columbus facility?

24 A. Yes.

25 Q. In the case of Rochester, it's a

51

1 different kind of powerhouse operation, right?

2 A. It's a -- yes. It's a little different.

3 They don't need as many people.

4 Q. And have you -- has Delphi done an
5 analysis of the savings to Delphi of the
6 proposals that have been made to the operating
7 engineers at each of the plants?

8 A. An analysis of --

9 Q. The specific cost savings?

10 A. Well, like I had mentioned previously.
11 We haven't quantified a target amount, but we
12 know that we're going to competitive wages and
13 benefits. So I -- to your point, a specific

14 analysis, I'm not aware of one.

15 Q. Now, have you done, when you talked about

16 competitive wages, have you done an analysis

17 of what powerhouse operators earn in the

18 automotive parts industry?

19 A. I have not, no.

20 Q. Okay. Are you aware of what the average

21 wage is for powerhouse operators in the

22 automotive parts industry?

23 A. Just the Delphi people. And they make,

24 approximately, thirty-one dollars an hour.

25 Q. Okay. Are you aware that the average

52

1 is -- in 2004; was twenty-eight dollars an

2 hour?

3 A. No, I'm not.

4 Q. Okay. Are you -- have you done any

5 analysis or has anybody given you an analysis

6 of what powerhouse operators earn in the

7 Columbus, Ohio area?

8 A. No, I have not seen one, no.

9 Q. Or in Ohio generally?

10 A. No.

11 Q. Or in the Rochester, New York area?

12 A. No.

13 Q. Or in New York, generally?

14 A. I've not seen one, no.

15 Q. Okay. At this point, Mr. Gerling, is the

16 pattern bargaining proposal, am I

17 characterizing it fairly if I say that it is a

18 proposal to the operating engineers that the

19 GM contingencies will be removed from the
20 buyout, wage and attrition aspects of the
21 March proposal?
22 A. Yes.
23 Q. If the operating engineers agree that
24 they will take whatever the UAW gets in every
25 area except what's not covered by the pattern

53

1 bargaining?
2 A. That's the principal, yes.
3 MS. MEHLSACK: I have no further
4 questions.
5 THE COURT: Okay. Any redirect?
6 MR. JERMAN: Good afternoon, Your
7 Honor, Tom Jerman of O'Melveny and Meyers for
8 the debtors.
9 REDIRECT EXAMINATION BY
10 MR. JERMAN:
11 Q. Good morning -- or good afternoon Mr.
12 Gerling. Just two questions really. Can you
13 refer back to Exhibit 291? I'd like you to
14 look at paragraph 11 of that document on the
15 second page.
16 A. Okay. Yeah, I have it in front of me.
17 Q. The paragraph 11 says, "The union
18 requests that any agreement, or portion
19 thereof, is better terms and/or conditions
20 than those negotiated with the IUOE be
21 guaranteed to the IUOE." What did you
22 understand that to mean?
23 A. That would mean, kind of, the me-too or

24 the most favored nations kind of concept that
25 we talked about earlier today.

54

1 Q. And can you tell the court why the
2 company decided to change from the specific
3 proposal that had been provided a couple of
4 weeks ago, to the -- what I'll call the
5 pattern proposal that was provided to the
6 various unions, the IAM, the IBEW and the IUOE
7 yesterday?

8 A. Well one is is that we recognized in our
9 discussions with them that their lack of a
10 benefit guarantee, and they had concerns about
11 retiree health care, was a big issue for them.
12 The other piece was our health care proposal
13 for active employees. And then the fact that
14 when we had bargained with these individual
15 groups in the past, they had typically taken
16 the -- and accepted the terms of what had been
17 negotiated with the UAW, which then, kind of,
18 rolled down to the IUE and then the
19 traditional employees at the steelworkers. So
20 consistent with that approach.

21 Q. Had the union represented indicated to
22 you that adopting a pattern approach would be
23 acceptable to them?

24 A. At different time, because of the most
25 favored nations, that would be acceptable,

55

1 yes.

2 Q. Thank you.

3 MR. JERMAN: No further questions.

4 THE COURT: Okay. Do you have

5 anything?

6 MS. ROBBINS: Uh-huh.

7 THE COURT: No. You could step down

8 sir. Oh, you do have something, I'm sorry.

9 MS. ROBBINS: Yeah, because I --

10 RECROSS EXAMINATION BY

11 MS. ROBBINS:

12 Q. Mr. Gerling, you were quite aware that

13 the IBEW and the IAM spokespeople, Mr.

14 Middleton and Mr. Griffin --

15 A. Uh-huh.

16 Q. -- were not proposing that they be put in

17 the position of your pattern bargaining? That

18 is that they would agree to be bound by

19 whatever was negotiated by another union?

20 A. They also had the most favored nation

21 clause in their agreements.

22 Q. Would you answer my question, sir?

23 MR. JERMAN: Objection --

24 Q. Did you --

25 MR. JERMAN: -- Your Honor. I

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1 believe he was answering.

2 THE COURT: No. No, he's saying

3 that they wanted the upside but not the

4 downside. But that's not the answer.

5 Q. Did you understand, from your discussions

6 with Mr. Middleton and Mr. Griffin, who are

7 the spokespeople --

8 A. Uh-huh.

9 Q. -- of the IBEW and the IAM, that it was

10 unacceptable to be put in the position where

11 they had agreed ahead of time, to a

12 negotiation that they had not been part of?

13 A. They mentioned that to me yesterday,

14 that's correct.

15 Q. And they certainly had never agreed to

16 the contrary?

17 A. In a formal, no they hadn't. But I had

18 always used a most favored nations, as an

19 approach to the pattern.

20 Q. In a most favored nations clause, first

21 of all, the company and the union have already

22 agreed to a term and condition of employment.

23 A. Okay.

24 Q. Is that right?

25 A. Well --

57

1 Q. They have a proposal that they both

2 agreed to.

3 A. There's something already established

4 that they --

5 Q. A specific wage rate --

6 A. Uh-huh.

7 Q. -- a specific benefit package, is that

8 right?

9 A. Uh-huh.

10 Q. In terms of your experience --

11 A. The way we've done it, that's correct.

12 Q. Yes. And then, basically, the question

13 is whether the company has agreed to something

14 more favorable with another group?

15 A. Okay.

16 Q. And whether that will apply to this

17 union, that's a most favored nations clause,

18 is that right?

19 A. I guess it could be. But I was looking

20 at it as, in addition to that, the pattern

21 that was also set in terms of other things.

22 But your point is part of that, absolutely.

23 Q. And so, the company is in control of both

24 what they agreed to initially, with the given

25 union, right?

58

1 A. Yeah.

2 Q. And what the company has agreed to with

3 other unions?

4 A. Yes.

5 Q. On the other hand, your proposal to the

6 IAM and the IBEW puts them in the position

7 where they're agreeing to something they have

8 no control over?

9 A. They would be accepting what -- what the

10 pattern would be from other folks, that's

11 correct.

12 THE COURT: Okay.

13 MS. ROBBINS: No further questions,

14 sir.

15 RE CROSS EXAMINATION BY

16 MS. MEHLSACK:

17 Q. Just to follow-up on Ms. Robbins'
18 question, Mr. Gerling. There are different
19 types of most favored nations clauses, are
20 there not?

21 A. I suppose there could be, yes.

22 Q. Okay. So you've not had experience with
23 most favored nations clauses, is that correct?

24 A. My experience has been, typically,
25 bargaining from, you know, in control of

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1 everything. And we haven't done the most
2 favored nations approach, that's correct.

3 Q. You've not done that?

4 A. That's correct.

5 MS. MEHSLACK: No further questions,
6 thank you.

7 THE COURT: Okay. You can step down
8 sir.

9 THE WITNESS: Okay.

10 MR. BUTLER: Your Honor, the
11 debtor's next witness in support of its
12 section 1113, 1114 motion is Mr. Darrell Kidd.
13 The debtors -- Mr. Kidd is divisional director
14 of labor relations at Delphi Corporation. And
15 the debtors call Mr. Kidd to the stand for
16 cross examination in support of his
17 declaration, supplemental declarations filed
18 as Exhibits number 9, 10 and 278. And subject
19 to cross examination, move those declarations
20 into evidence.

21 THE COURT: Okay.

22 MR. KENNEDY: Your Honor, the order

23 of union cross examination is going to be,

24 steelworkers, auto workers, IAM and then, if

25 necessary, IUE.

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1 THE COURT: Okay. Mr. Kidd would

2 you raise your right hand, please?

3 (Witness is duly sworn.)

4 THE COURT: For the record, could

5 you spell your name?

6 THE WITNESS: Darrell, D-A-R-R-E-L-

7 L. Last name, Kidd, K-I-D-D.

8 CROSS EXAMINATION BY

9 MR. PETERSON:

10 Q. Good afternoon Mr. Kidd. Lowell Peterson

11 for the steelworkers. I'm going to be very

12 brief. You mentioned the steelworks just in

13 one paragraph of your most recent declaration.

14 You said you met with the steelworkers, I

15 believe, it was Monday, May 15?

16 A. Yes, sir. That's true.

17 Q. Now, that was a meeting that lasted about

18 fifteen, twenty minutes, right?

19 A. We actually had two meetings, counselor.

20 We had one with the thermal and interior

21 division. And then we had another meeting

22 with the automotive holdings group. Because

23 we actually were meeting on Vandalia and then

24 we had a meeting on Home Avenue.

25 Q. You're talking about Monday the 15th?

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1 A. I'm not quite sure of the date, but
2 around that timeframe.

3 Q. All right. Well, I'm just asking you
4 about the one you referred to in your
5 declaration. I know Mr. Quick has submitted
6 an additional declaration. But let's talk
7 about the Monday, the May 15th meeting. That
8 was when the USW people just first showed up
9 in Detroit, right?

10 A. I think so, yes.

11 Q. All right. Now was that the meeting,
12 perhaps you're referring to a different
13 meeting. Is that the meeting where Mr.
14 O'Neil, the COO of the company, met with Denny
15 Bingham, the president of Local 87?

16 A. Yes. There was a meeting between Rodney
17 O'Neil, myself and Denny Bingham.

18 Q. That was -- those -- the three of you
19 were the only people at that meeting then?

20 A. That's correct.

21 Q. All right. And that was about fifteen,
22 twenty minutes long.

23 A. That's what was throwing me. That
24 meeting, in my perception, was more like an
25 hour.

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1 Q. All right.

2 A. I couldn't remember a fifteen minute
3 meeting that Denny and I had had.

4 Q. All right. Maybe it felt like an hour.

5 THE COURT: And I'm sorry, you said
6 this is May 15th?

7 MR. PETERSON: May 15th, yes. Last
8 Monday.

9 THE COURT: Okay.

10 MR. PETERSON: A week ago, last
11 Monday.

12 Q. And at that meeting Mr. O'Neil thanked
13 Denny Bingham for the work that the
14 steelworkers had done with Delphi in the past,
15 to help keep the company competitive, correct?

16 A. That's correct.

17 Q. All right. And you didn't actually get
18 into any discussions about specific terms and
19 conditions of employment, wages, changes to
20 benefit plans, at that level of detail, right?

21 A. That's not correct.

22 Q. Did you -- that was a negotiating session
23 at which the company made proposals and the
24 union made counterproposals?

25 A. There was not a proposal and

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1 counterproposal but the subject matter of that
2 meeting between Mr. O'Neil, myself and Mr.
3 Bingham was on the sites.

4 Q. Which sites would remain open?

5 A. That's correct.

6 Q. All right. Sorry. And Home Avenue was

7 not scheduled to remain open, while Vandalia
8 is scheduled to remain open, correct?
9 A. Our proposal was that Home Avenue would
10 be sold or closed. And we were trying to put
11 together a process to keep Vandalia open,
12 that's correct.
13 Q. All right. Now when you say you're
14 trying to put together a process to keep
15 Vandalia open, are you referring to a process
16 similar to the fix-it program that had been
17 put into place in the fall of 2004?
18 A. No, what I'm talking about is a
19 presentation that we gave to Mr. Bingham and
20 the whole executive committee of Local 87L.
21 Where we outlayed for them a proposal which
22 would bring work into the Vandalia facility
23 and allow it to continue.
24 Q. All right. I think we are talking
25 different meetings again. I'm talking about

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1 this Mon -- when did you have -- when did you
2 make that proposal that was later in the week,
3 correct?
4 A. We had made the original proposal prior
5 to the May 15th meeting with Mr. O'Neil. Mr.
6 O'Neil was doing a follow-up discussion with
7 Mr. Bingham because Mr. Bingham had expressed
8 concern about the viability of that business
9 that we were bringing in.
10 Q. All right. The business that you're
11 referring to bringing in is thermal business

12 that was going to be brought into Vandalia,

13 correct?

14 A. That's correct.

15 Q. All right. Business that -- and the
16 union had expressed interest in working with
17 the company to facilitate bringing that
18 business into Vandalia, correct?

19 A. That's correct.

20 Q. All right. And so what your discussion
21 was, was, if you will, the business plan.
22 What kinds of products would be manufactured
23 at the Vandalia facility, rather than specific
24 deductibles of medical insurance and so forth,
25 is that --

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1 A. That's correct.

2 Q. Okay. Thank you.

3 MR. LEVINE: Your Honor, Bruce
4 Levine, Cohen, Weiss and Simon for the
5 autoworkers.

6 CROSS EXAMINATION BY

7 MR. LEVINE:

8 Q. Good afternoon Mr. Kidd.

9 A. Yeah.

10 Q. I know we've met, not only in the
11 courtroom, but out in Detroit for Mr. Rupert's
12 deposition, is that correct?

13 A. That's correct.

14 Q. And Mr. Rupert is one of the people that
15 you negotiate with across the table? He's a
16 representative of the UAW, is that correct?

17 A. Yes. He's administrative assistant to
18 Mr. Shoemaker.
19 Q. Uh-huh. Very well. And your current
20 position again is?
21 A. I'm the executive director of labor
22 relations for Delphi.
23 Q. Okay. And how long have you served in
24 that capacity? It wasn't quite clear from
25 your declaration.

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1 A. I lose track myself, but I think it's
2 about two years.
3 Q. Okay. And how have your duties changed
4 in those two years then? I guess, I know now
5 you've stated in your declaration that you
6 negotiate the national agreement with the UAW,
7 among other things. Is that something that
8 you also did more than two years ago?
9 A. I guess the answer, Bruce, would be -- in
10 my previous assignment I was a divisional
11 director. And so I was responsible for the
12 labor activities at the divisional level. But
13 as part of those divisional activities, I also
14 sat on sub-committees with Delphi. And in
15 previous experience, with General Motors, I
16 sat on sub-committees with General Motors, as
17 well. In my new assignment, Mr. Butler and I,
18 coordinate national hiring for Delphi.
19 Q. Now how long, not only in your current
20 position, have you been involved at the table
21 in negotiations with the UAW?

22 A. Would you repeat the question?

23 Q. For how long have you been involved in
24 negotiations with UAW, both in your current
25 position and in your prior positions?

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1 A. At any bargaining table?

2 Q. Yeah, with UAW on behalf of Delphi and/or
3 GM?

4 A. Twenty-seven years.

5 Q. Okay. Now, I'd like you to turn, if you
6 could to, I believe its Exhibit 89, which
7 contains the consensual proposal. The GM
8 consensual proposal tendered to UAW --

9 THE COURT: I'm sorry, 279?

10 MR. LEVINE: No, I'm sorry, Your
11 Honor. I think it's 89.

12 THE COURT: Eight --

13 MR. LEVINE: Eight, nine. And for
14 the record, this is the GM consensual proposal
15 tendered to the UAW in late March of 2006.
16 Actually, I believe it was March 24, 2006.

17 Q. Is that correct?

18 A. That's correct.

19 Q. And you're familiar with this document?

20 A. Yes, I am.

21 Q. Okay. Turn please, to the second page.
22 Actually --

23 MR. LEVINE: Strike that.

24 Q. On the first and second pages, there are
25 a number of agreements between UAW and Delphi,

1 identified as national agreements. Could you
2 just give the court an idea of which of those
3 agreements you've been involved with, in terms
4 of negotiating those agreements?

5 A. Well I guess, in terms of involved with,
6 counselor, I would have been involved in the
7 2003 bargaining and the supplemental
8 bargaining in 2004. And then when we go over
9 to pages two and three, I would have to
10 actually go through item by item, and try and
11 figure out which ones I had participated in.

12 Q. How about any of the special attrition
13 plans on the bottom of page two, beginning
14 with the Trenton plan and going on over to the
15 Livonia plan.

16 A. Okay. My recollection would be the 2005
17 March 10th, Tulsa attrition plan.

18 Q. Is that Tuscaloosa?

19 A. Excuse me, Tuscaloosa. Thank you. The
20 special attrition plan for the automotive
21 holdings group at Flint West, dated July 22,
22 2004. And I think that's it in terms of
23 attrition plans.

24 Q. Okay. That's fine. Now, were any of
25 those agreements that you were involved with,

1 negotiated in the context of a pending
2 bankruptcy?

3 A. No, sir.

4 Q. And were there any deadlines associated
5 with any of those attrition agreements that
6 you were involved with?

7 A. Official deadlines, no. But in the case
8 of Flint West we had -- we had a generic time
9 line that we were working toward. That plant
10 closure flowed from 2003 bargaining. And
11 there was an understanding between the parties
12 that we would work toward what we would do
13 with the people.

14 Q. So the parties agreed to a deadline and
15 worked to consummate an agreement within that
16 agreed to deadline?

17 A. Yes. But it wasn't a hard and fast date.

18 Q. Okay. But that's what the parties agreed
19 to?

20 A. Correct.

21 Q. Okay. Now, were you involved in the
22 negotiation of the special attrition program
23 that UAW, Delphi and GM agreed to on the eve
24 of the filing of this motion, the 1113 motion?

25 A. Only generically.

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1 Q. But you signed the agreement, didn't you?

2 A. Yes.

3 Q. Okay. Please refer to Exhibit 72 now,
4 which, I believe, is the special attrition
5 program to which I'm referring.

6 A. Let's see.

7 Q. Are you there, Mr. Kidd?

8 A. Yes, sir.

9 Q. Look on the last page, please, page 6.
10 Right there, smack in the middle, is that your
11 signature, sir?
12 A. Yes, sir. It is.
13 Q. Okay. So you're one of three people, on
14 behalf of Delphi Corporation, who signed on to
15 the special attrition program, reached last --
16 in March, is that correct?
17 A. That's correct.
18 Q. Okay. And do you know the three folks
19 from the United Auto Workers who signed off on
20 this agreement?
21 A. Yes, sir. I do.
22 Q. Okay. And you've worked with them
23 before?
24 A. Yes, I have.
25 Q. One of whom is Mr. Rupert, who will be

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1 testifying in this proceeding, is that
2 correct?
3 A. That's correct.
4 Q. All right. And you've negotiated with
5 the --
6 MR. LEVINE: Withdrawn.
7 Q. Shook their hands after this agreement
8 was consummated, do you recall that?
9 A. I don't recall shaking their hands, but I
10 would have.
11 Q. You would. In the ordinary course of --
12 we bargainers tend to shake hands once we
13 consummate a collective bargaining agreement,

14 isn't that correct?

15 A. That's correct.

16 THE COURT: Sometimes before.

17 MR. LEVINE: I'm sorry, Your Honor.

18 THE COURT: Sometimes before, too?

19 MR. LEVINE: sometimes before too,

20 Your Honor. And sometimes not, but when we're

21 done we generally try and shake hands.

22 THE COURT: Okay.

23 MR. LEVINE: Go home miserable or

24 happy but glad that we've done the deal.

25 Q. Now, I want to refer you to paragraph 25

72

1 of your supplemental declaration. That's your

2 first supplemental declaration. And I believe

3 that's marked as joint Exhibit 10.

4 A. I'm sorry, Bruce, could you tell me what

5 reference you're looking for again?

6 Q. Paragraph 25 of your supplemental

7 declaration.

8 A. Okay.

9 Q. Are you there?

10 A. Yes, sir. I am.

11 Q. Could you refer, please, to -- give me

12 one moment please, I need to get a copy for

13 myself.

14 MR. LEVINE: I apologize, Your

15 Honor.

16 Q. I'm referring you to paragraph 25. In

17 which you state, in the first sentence, "the

18 UAW's arguments that the attrition programs

19 would solve Delphi's problems." Then you site
20 to, "UAW memorandum at 37 to 38, assume away a
21 number of contract terms that the unions have
22 never offered to modify."

23 A. I'm sorry Bruce. I'm in my declaration
24 at 25 and that's over time.

25 THE COURT: Now, this is Exhibit 10?

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1 MR. JERMAN: Its number 9, I think.

2 THE COURT: No, it's number 10.

3 MR. BUTLER: Whoever was saying 9 is
4 wrong, it's 10.

5 Q. Your first supplemental.

6 A. Okay. I'm there now.

7 Q. You're there. Okay. Did I -- let me
8 read that sentence again. "The UAW arguments
9 that the attrition program -- programs, would
10 solve Delphi's problems. UAW memorandum at 37
11 and 38, assume away a number of contract terms
12 that that the unions have never offered to
13 modify." Is that your statement?

14 A. That's correct.

15 Q. And do you stand by that statement?

16 A. I do.

17 Q. Did you read the UAW's memorandum at
18 pages 37 and 38?

19 A. Generically, yes, I've read the document.

20 Q. Generically, or did you read those pages
21 when you swore to this declaration, or prior
22 to swearing to this declaration?

23 A. I've went through the documents and

24 others, Bruce.

25 Q. Well, let's look at page 37 and 38,

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1 which, I believe, is joint Exhibit 175.

2 MR. LEVINE: Your Honor, that's the
3 UAW's objection.

4 Q. And when you get there, Mr. Kidd, I'd
5 like you to review pages 37 and 38 and tell me
6 if you can find, anywhere on those pages,
7 where the UAW says that the special attrition
8 programs will solve Delphi's problems?

9 A. On 37 and 38?

10 Q. Correct.

11 A. Okay. I don't, specifically, see a
12 reference that it would -- that the attrition
13 plan would solve Delphi's problems.

14 Q. I think you could infer from those pages
15 that UAW thinks that the special attrition
16 program is a good thing, right?

17 A. Yes.

18 Q. And you would agree that the special
19 attrition program was an important step in
20 restructuring Delphi, correct?

21 A. I would.

22 Q. Yeah. And would you believe that it was
23 a critical step?

24 A. I believe it was an important step,
25 counselor. I don't know that I could say that

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1 it was a critical step.

2 Q. Well, Delphi thinks it was a critical
3 step, doesn't it?

4 A. I think Delphi thinks it's an important
5 step. The reason I say important instead of
6 critical is, I suppose, there would have been
7 other ways to go about trying tot solve the
8 problem.

9 Q. Okay.

10 A. But I do believe it's an important step.

11 Q. All right. Well then, let's turn to
12 exhibit number 53, which is Delphi's press
13 release tendered to the world on the eve -- on
14 the day that the special attrition program was
15 entered into.

16 THE COURT: Let's not. I mean, it's
17 a press release. I mean, critical, important.
18 In the context of a press release -- I think
19 we should move on.

20 MR. LEVINE: Your Honor, this is an
21 exhibit that was offered by Delphi. This is an
22 exhibit that was

23 THE COURT: All right. Fine. You
24 know --

25 MR. LEVINE: Well, Your Honor -

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1 THE COURT: We'll spend fifteen
2 minutes on the press release, that's fine.

3 MR. LEVINE: Your Honor, I just
4 wanted to suggest that -- I just wanted to

5 show for the record that Delphi said --

6 THE COURT: You could point to it in
7 your brief. It's a press release.

8 MR. LEVINE: For the record, Your
9 Honor, I will not go into it. But the first
10 sentence of Exhibit 53 states that Delphi
11 announced that the special attrition program
12 was a critical milestone in its restructuring.

13 THE COURT: Okay.

14 MR. LEVINE: That's all for that.

15 THE COURT: I'm not doubting the
16 importance of it. I'm just talking about how
17 people like press releases and --

18 MR. BUTLER: We did not insert that
19 press release into the record.

20 THE COURT: That's fine. I'm just
21 trying to move things along.

22 MR. LEVINE: Thank you, Your Honor.

23 Q. Now, let's turn back to your supplemental
24 declaration, Mr. Kidd. And I'm looking at
25 paragraphs 25 and 26. Are you there, Mr.

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1 Kidd?

2 A. Yes, sir. I am.

3 Q. I take it, and tell me if I'm wrong. I
4 don't mean to put words in your mouth. But,
5 are you saying there, basically, that Delphi's
6 current agreement with UAW makes it almost
7 impossible for Delphi to reduce its UAW
8 workforce? Is that fair to say?

9 A. Repeat your statement.

10 Q. Well, is it your basic point that the
11 current provisions of the collective
12 bargaining agreement between the UAW and
13 Delphi, makes it almost impossible for Delphi
14 to reduce its workforce -- its UAW workforce?
15 A. I'm not getting into semantics here, but
16 I don't think that impossible is the right
17 word, difficult, but not impossible.
18 Q. But it is true, is it not, since Delphi's
19 spin off from GM, Delphi's hourly workforce,
20 in general, and the UAW's hourly workforce in
21 particular, has been dramatically reduced,
22 correct?
23 A. That's correct.
24 Q. And I'd like to review with you the
25 extent to which that hourly workforce has been

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1 reduced. And I would refer you, please, to
2 Exhibit 237, which is Delphi's 10K filed with
3 the SEC on March 17, 1999, specifically page
4 35.
5 A. I think I'm there, counselor.
6 Q. Are you there?
7 A. I think so, yes.
8 Q. And you see the chart there which states
9 that as of December 31, 1998, there were
10 43,150 members of the United Auto Workers
11 employed by Delphi?
12 A. That's correct.
13 Q. Would you, please, refer now to Exhibit
14 253, Delphi's 10K filed with the SEC on June

15 30, 2005, page 12?

16 A. I'm there.

17 Q. Okay. And Delphi indicates in that

18 filing that as of December 31, 2004, Delphi

19 employed 25,200 UAW employees, is that

20 correct?

21 A. That's correct.

22 Q. So the workforce was reduced from -- the

23 UAW workforce with the contract provisions

24 that you discuss in your declaration

25 notwithstanding, was reduced from 43,150 to

79

1 25,200 between 1999 and the end of 2004,

2 correct?

3 A. That's correct.

4 Q. Okay. And refer now, please, to

5 paragraph 11 of Kevin Butler's declaration,

6 which I believe is exhibit number --

7 THE COURT: I'm sorry. Which one is

8 it?

9 MR. LEVINE: I'm sorry, Your Honor,

10 its Exhibit 7.

11 THE COURT: Seven.

12 Q. Paragraph 11.

13 A. I'm there, counselor.

14 Q. Okay. So, according to Mr. Butler, as of

15 the date of that declaration, March 31, 2006,

16 there were 23,317 UAW represented workers, is

17 that correct?

18 A. That's correct.

19 Q. And you don't have any reason to dispute

20 Mr. Butler's declaration, do you?

21 A. None.

22 Q. Okay. Based on my mathematical

23 calculations, it appears that the UAW hourly

24 workforce at Delphi, has been reduced forty-

25 six percent since the spin off, have any

80

1 reason to challenge those numbers and that

2 percentage?

3 A. No, I don't.

4 Q. Mr. Kidd, can we look to the special

5 attrition program again, please? It's Exhibit

6 72.

7 A. Okay, counselor.

8 Q. Okay. Page 4, subsection 6, paragraph 6,

9 towards the bottom of page 4, are you there?

10 A. Yes, sir.

11 Q. I want to read that into the record.

12 "Delphi and UAW agree to the following:

13 Delphi will use temporary employees as needed,

14 to bridge any difficulties arising from the

15 implementation of the special attrition

16 program, subject to the approval of the UAW

17 Delphi national parties." Does that

18 subsection A, give Delphi a right it does not

19 have under the national agreement, to hire

20 temporary employees?

21 A. It basically says that the UAW will work

22 with us during the attrition plan for the use

23 of temporaries.

24 Q. And, in fact, Delphi has been recruiting

25 temporary employees already, isn't that

81

1 correct?

2 A. By recruiting, what do you mean?

3 Q. Hiring.

4 A. We have started bringing some temporaries

5 in, yes.

6 Q. And but for the special attrition

7 program, you wouldn't have the right to do

8 that, isn't that correct?

9 A. The use of temporary employees is at the

10 agreement of the UAW.

11 Q. B reads, this is 6(b), "Delphi and the

12 UAW may agree to use separated employees as

13 contract personnel on a case by case basis, as

14 needed to bridge any difficulties arising from

15 the implementation of the special attrition

16 program." Does that provision give Delphi a

17 right it does not have under the national

18 agreement with the UAW?

19 A. It's basically a right we don't normally

20 have under the national agreement.

21 Q. And that's to use contract personnel?

22 A. That's correct.

23 Q. And what is a contract person? What are

24 contract personnel?

25 A. In the context of this agreement what we

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1 mean by that is, we would bring someone who,

2 indeed, may have been a retiree back through a
3 contract agency, for the purposes of training
4 other employees, which is something we've done
5 before.

6 Q. Okay. And let me read paragraph 6 --
7 subparagraph 6, paragraph 6(c), "during the
8 course of the special attrition program, the
9 eligibility of GM employees to float at Delphi
10 will be suspended. And no additional hiring
11 obligations due to attritions or flow-backs
12 from Delphi to GM will accrue." Does that
13 provision give Delphi rights that it does not
14 have under the national agreement?

15 A. I believe it does.

16 Q. Now, Mr. Kidd, I understand that you've
17 filed a second supplemental declaration in
18 connection with negotiations between UAW,
19 since the last hearing date in this matter, is
20 that correct?

21 A. A second supplemental, yes.

22 Q. All right. I'm not going to ask you a
23 lot of questions about that; I'll let Mr.
24 Rupert speak for himself when he testifies.
25 But let me ask you this; is it your intention

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1 to file a declaration every time you meet with
2 UAW during the penance of these proceedings?

3 MR. BERKE: Your Honor, I object to
4 that. This is a proceeding, a legal
5 proceeding and based on law and appropriate
6 procedures during 1113, 1114 and this

7 gentleman should not be tarred by his
8 attorney's determinations as to what is
9 relevant and appropriate.

10 THE COURT: Are you objecting on the
11 basis of privilege?

12 MR. BERKE: I'm objecting -- yeah.
13 I will also say it is irrelevant.

14 THE COURT: All right. Let's --
15 well, I don't know if it's irrelevant, but --

16 MR. LEVINE: Your Honor, I'll
17 withdraw the question.

18 THE COURT: Okay.

19 MR. LEVINE: Thank you Mr. Kidd.

20 THE COURT: But it raises an
21 interesting and good point. Could I, just
22 while we're on this exhibit, if you look at
23 paragraph 6(c) there on that page 4 --

24 THE WITNESS: Uh-huh.

25 THE COURT: What -- maybe I'm

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1 missing something but, doesn't -- isn't that
2 inconsistent with the paragraph in your
3 affidavit that says that the attrition program
4 assumes away provisions of the contract? This
5 seems to permit the waiver of those
6 provisions, or am I missing something. Let me
7 take you back to -- if you look at paragraph
8 26 of your affidavit, it talks about -- no,
9 25, excuse me -- that the attrition program --
10 I'll wait till you get there.

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: It says the attrition
13 program -- in relying on the -- I'm just
14 paraphrasing, in relying on the attrition
15 program the UAW assumes away various
16 provisions of the collective bargaining
17 agreements, such as hiring requirements that
18 are still there. I think -- and we recognized
19 earlier that didn't -- UAW didn't really say
20 everything you said in that paragraph, but the
21 just of the paragraph was that the UAW was
22 asserting that -- notwithstanding the
23 attrition program, the company would still
24 have to continue to hire people, that's what I
25 took away from that paragraph.

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1 THE WITNESS: Let me see if I can
2 answer the questions. I think what we're
3 saying is, the attrition program the UAW has
4 agreed to waive provisions for the
5 implementation of the program. They have not
6 agreed to cancel provisions of the national
7 agreement.

8 THE COURT: But, where else would
9 that be relevant except in connection with the
10 attrition program. Just as far as that
11 paragraph is concerned.

12 THE WITNESS: Well, we could --

13 THE COURT: You're saying you can't
14 do more attrition under other normal attrition
15 processes. You're not referring,
16 specifically, to the fact that they can do --

17 they can still, in connection with the
18 attrition program, rely on other provisions of
19 the agreement?

20 THE WITNESS: What I'm saying is,
21 particularly as it pertains to hiring
22 requirements, which if you look at, I think
23 it's 6(c) and it talks no additional hiring
24 obligations --

25 THE COURT: Right.

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1 THE WITNESS: In terms of the
2 attrition program, that's a UAW waiver in my
3 opinion.

4 THE COURT: Okay.

5 THE WITNESS: The hiring provisions
6 of the national agreement still exist and --

7 THE COURT: If you have other -- if
8 people don't take advantage of the attrition
9 program and the company still wants or needs
10 to terminate.

11 THE WITNESS: Or for sake of
12 argument, if you got passed the attrition
13 program, the hiring obligations come in.

14 THE COURT: All right. Okay.
15 Thanks. But it's the company's hope that the
16 attrition program will take care of a large
17 portion?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Okay. All right.

20 MR. KENNEDY: Your Honor, Tom
21 Kennedy, IUE-CWA. I just had a couple of

22 questions to follow-up and then the IAM and
23 IBEW will conclude the union cross examining,
24 at least this round.
25 CROSS EXAMINATION BY

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1 MR. KENNEDY:
2 Q. Darrell, if you'd look at -- well, first
3 let me just ask you a question. Maybe we
4 don't need the documents. Mark Weber was
5 unable to answer the question. Do you know
6 what the IUE-CWA membership was at the time of
7 the spin off?
8 A. Not precisely, no.
9 Q. All right. Then why don't I direct your
10 attention to Exhibit 237, page 35.
11 A. I'm there, counselor.
12 Q. All right. Do you see that the IUE union
13 representation at that time was identified as
14 15,837 represented Delphi employees?
15 A. Yes.
16 Q. And as we sit here today, the current IUE
17 representation in the Delphi chain is
18 approximately 8,400?
19 A. That's correct.
20 Q. And all of that was accomplished under
21 the current agreements, correct? That
22 reduction in head count?
23 A. Yes.
24 MR. KENNEDY: All right. No other
25 questions.

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1 CROSS EXAMINATION BY

2 MS. ROBBINS:

3 Q. Good afternoon, Mr. Kidd.

4 A. Good afternoon, counselor.

5 Q. Marianne Robbins representing the IAM and
6 the IBEW. In your initial declaration you go
7 through a number of the contract provisions in
8 the various labor agreements. Do you happen
9 to know what the overtime provision is for
10 first-line supervisors? These are salaried --
11 they're non-bargaining unit employees.

12 A. Specifically, no I don't.

13 Q. Okay. Do you have any knowledge of the
14 specific contract provisions for the IAM and
15 IBEW?

16 A. No, I do not.

17 Q. This is going to be a quick examination
18 if things keep going this way. You also have,
19 in your declaration, a number of references to
20 information requests. Do you have any first-
21 hand knowledge concerning responses to the
22 information requests of the IAM and IBEW?

23 A. I'm sorry, repeat the question.

24 Q. Do you have first-hand knowledge of the
25 responses to the request for information made

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1 by the IAM or the IBEW?

2 A. No, I do not.

3 Q. Would you agree that the company has not
4 put together any specific cost savings for the
5 language issues that you describe in your
6 declaration? I think it starts at about
7 paragraph 37 and it goes through 49.

8 A. Specific individualized costing by
9 element?

10 Q. Of language issues.

11 A. Uh-huh.

12 Q. Such as, if there was a change in the
13 current contract language, and I'm not talking
14 about economic issues such as wages, but you
15 go through a number of issues concerning
16 changes in language you would like to see, and
17 I'm asking whether you would agree that the
18 company has not done any costing of those, in
19 terms of the cost savings that would be
20 realized by changing the language?

21 A. No, I cannot agree that we haven't done
22 any.

23 Q. Okay. Would you agree that you have not
24 shared any of the information concerning cost
25 savings with the IAM and IBEW?

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1 A. Repeat your question, counselor. Repeat
2 your question.

3 Q. Okay. I'm sorry. I think I've got a
4 solution to this problem. That is, stand up
5 straight and not get too close to the
6 microphone. Do you -- would you agree that
7 you have no direct knowledge of whether any

8 costing information on specific language
9 proposals has been provided to the IAM and
10 IBEW?
11 A. That's correct.
12 Q. Would you agree that the penny sheets
13 that you make reference to do not show any
14 cost savings from language issues, such as,
15 you know, a change in successorship language,
16 or things of that sort?
17 A. The penny sheets would not show reference
18 to change in successorship.
19 MS. ROBBINS: No further questions.
20 THE COURT: Okay.
21 MR. BERKE: Your Honor, if that
22 concludes the cross examination, I would
23 conduct a little bit of re-direct.
24 THE COURT: All right. All done?
25 Yes. Okay go ahead.

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1 MR. BERKE: Thank you. Your Honor,
2 I'm Jay Berke from Skadden Arps, representing
3 Delphi Corporation.
4 REDIRECT EXAMINATION BY
5 MR. BERKE:
6 Q. Now, Mr. Kidd, you were asked questions
7 about reduction in head count of UAW and IUE
8 member employees, which occurred prior to the
9 special attrition program, is that correct?
10 A. That's correct.
11 Q. And can you tell us, with respect to the
12 UAW reduction in head counts that were

13 referred to, how did those come about?

14 A. Well, in some cases they were part of
15 attrition programs like the Tuscaloosa special
16 attrition program. In other cases it's normal
17 attrition.

18 Q. And when you say attrition programs like
19 the Tuscaloosa, what do you mean? What was
20 the Tuscaloosa program?

21 A. Tuscaloosa was a UAW Delphi site that
22 had, basically, lost its product and we
23 agreed, between the parties, to do two things.
24 One, we ran an attrition program so that we
25 could alleviate the jobs bank. And two, we

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1 agreed to transfer some of the employees to
2 Cottdondale, which was another Delphi site.

3 Q. So, could you have just attrited
4 employees at the Tuscaloosa site without
5 negotiating and without giving something up
6 for it?

7 MR. LEVINE: Objection, Your Honor,
8 leading.

9 THE COURT: Sustained.

10 MR. BERKE: Sustained?

11 Q. Well, in the program, did the Tuscaloosa
12 attrition program cost Delphi anything?

13 A. Yes, it did.

14 Q. What did it cost?

15 A. We, basically, ran a program that was, as
16 I recall, 89,000 dollars to have an employee
17 leave the Tuscaloosa site. And, as I recall

18 counselor, there was more to the attrition
19 plan than that, but that was the piece that
20 sticks out in my mind.
21 Q. And when you say, as you recall there was
22 more than that, are you saying you can't
23 remember what else was there?
24 A. That's correct.
25 Q. And how about the attrition of the IUE

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1 employees. Do you know how that came about?
2 The pre -- special attrition program,
3 attrition of IUE employees, which Mr. Kennedy
4 asked you about?
5 A. Again, I would think it would be two
6 things. Normal ordinary attrition people,
7 retiring people quitting, that sort of things,
8 and then special attrition programs.
9 Q. And when you have normal and ordinary
10 attrition, does that cost the company
11 anything?
12 A. Well, it cost the company in terms of the
13 pension plan.
14 Q. And what about OPEB?
15 A. And OPEB.
16 Q. Anything else?
17 A. Life insurance in retirement.
18 Q. And does the company have any obligations
19 to back fill any of those positions that were
20 normally attrite?
21 A. With the IUE?
22 Q. With the IUE or the UAW.

23 A. With the IUE, normally not. With the
24 UAW, we do have secured employment level
25 provisions. However, they have not been

94

1 implemented lately.
2 Q. Okay. Now, would you turn, with me, to
3 Exhibit 76? Which was the special attrition
4 program, I believe. 72. That is 72 not 76.
5 A. I'm there, counselor.
6 Q. And I believe during your cross
7 examination your attention was directed to
8 paragraph 6 on page 4 of that program,
9 correct?
10 A. That's correct.
11 Q. In 6(a) it says, "Delphi will use
12 temporary employees as needed to bridge any
13 difficulties arising from the implementation
14 of the special attrition program, subject to
15 the approval of the UAW, Delphi national
16 parties," correct?
17 A. That's correct.
18 Q. What do they mean when they say, to
19 bridge any difficulties? What sort of
20 difficulties were contemplated?
21 A. What we were contemplating at that point
22 in time is, when you run an attrition program
23 you normally get a preference from the
24 employee of when they would like to retire,
25 particularly. And if you try and meet those

95

1 retirement dates, sometimes you find yourself
2 in a situation where, for a short period of
3 time, you still need an employee at that work
4 station. So this was a provision to alleviate
5 that concern.

6 Q. And was there -- were there provisions
7 elsewhere in this agreement that said, you
8 were required to accommodate the employee on
9 when he or she wanted to leave?

10 A. Required, no.

11 Q. But the company would attempt to do,
12 wouldn't they?

13 A. The parties would work together.

14 Q. The parties would want to do so, because
15 that would encourage individuals to take
16 advantage of the special attrition program,
17 correct?

18 A. Certainly.

19 Q. And so, this doesn't provide, does it,
20 6(a), that you absolutely can use temporary
21 employees when there is attrition under the
22 program?

23 A. It's subject to the approval of the UAW.

24 Q. So, how do you know when you can use
25 them, these temporary employees, and when you

96

1 can't use them?

2 A. I know when the United Auto Workers tell
3 me they're in agreement.

4 Q. So this was something that would be

5 subject to discussion as you went along, is
6 that correct?

7 A. Certainly.

8 Q. Can you tell me how the unions were
9 able --

10 THE COURT: It works better if you
11 don't lead. It just -- it comes off better.
12 I'd like to hear him answer it.

13 MR. BERKE: Okay.

14 MR. SIMON: Your Honor, we have been
15 more than tolerant. But what's good for the
16 goose is good for the gander, I mean. This
17 counsel has been fairly aggressive in his
18 objections. I think we have been fairly
19 limiting in our objections.

20 THE COURT: Anyway I -- I know
21 you're trying to move things along but --

22 MR. BERKE: Duly chastised by Mr.
23 Simon and the Court.

24 THE COURT: Okay.

25 MR. BERKE: Apologetic to both.

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1 Q. Do you know how it was that the UAW was
2 able to approve this program, if there were
3 issues such as 6(a) that were subject to
4 discussion in it?

5 A. How they were able to approve it? My
6 opinion would be that they approved it based
7 on historical practice of having run attrition
8 programs before.

9 Q. Now, does the special attrition program

10 permit forced involuntary attrition?
11 A. Forced involuntary?
12 Q. Correct.
13 A. No.
14 Q. Does it permit Delphi to close or wind
15 down any facilities?
16 A. No, it does not.
17 Q. Does it permit Delphi to sell any
18 facilities?
19 A. No, it does not.
20 Q. Does it permit Delphi to lower any wage
21 for benefits in existing contracts?
22 A. It is exclusively an attrition program.
23 Q. And does it have a time span in it?
24 A. I don't recall.
25 Q. And is it binding on any employee, such

98

1 that he or she is required to accept attrition
2 pursuant to the program?
3 A. This is a voluntary special attrition
4 program.
5 MR. BERKE: Okay.
6 THE COURT: Okay.
7 MR. BERKE: Nothing more.
8 THE COURT: Any re-cross?
9 MR. LEVINE: No thank you, Your
10 Honor.
11 MR. KENNEDY: I just have one or two
12 problems, Your Honor.
13 THE COURT: I'm sorry.
14 RE-CROSS EXAMINATION BY

15 MR. KENNEDY:

16 Q. Just to clarify the back-fill
17 arrangements that you discussed on re-direct.
18 Most of the IUE plants do not require the
19 employer to re-hire individuals who attrite
20 for any reason, correct?

21 A. That's correct.

22 Q. Is it also true that the Warren, Ohio
23 facilities that the IUE represents there, has
24 in place a job and income security agreement?

25 A. I believe that's true.

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1 Q. And the job and income security
2 agreement, for a substantial period of time,
3 required the company to back-fill one
4 individual for each three who attrited?

5 A. I believe that's correct.

6 Q. And isn't it also true that the IUE
7 waived, in recent years, any commitment by the
8 company to back-fill jobs because of the lack
9 of available work at Warren?

10 A. I believe that's correct also.

11 Q. And that was done under the existing
12 contract?

13 A. Yes.

14 Q. All right. Thank you.

15 THE COURT: No other recross? Okay,
16 you can step down Mr. Kidd.

17 THE WITNESS: Thank you.

18 MR. BUTLER: Your Honor, the next
19 witness the debtor's would call in support of

20 its section 1113, 1114 motion is Bernard J.
21 Quick. Mr. Quick is a director of labor
22 relations at Delphi Corporation. And we call
23 him for cross examination in connection with
24 his declarations and supplemental directions
25 that have been marked as Exhibits 11, 12 and

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1 279. And I call him for cross examination in
2 connection with those declarations which we
3 move into evidence subject to cross
4 examination.

5 THE COURT: Okay.

6 MR. KENNEDY: Your Honor, the order
7 of union cross examination would be the
8 steelworkers and then the IUE-CWA.

9 THE COURT: All right. Mr. Quick
10 would you raise your right hand please?

11 THE WITNESS: Yes, sir.

12 (Witness is duly sworn.)

13 THE COURT: Okay. And would you
14 spell your name for the record?

15 THE WITNESS: Yes. B-E-R-N-A-R-D Q-
16 U-I-C-K.

17 CROSS EXAMINATION BY

18 MR. PETERSON:

19 Q. Good afternoon, Mr. Kidd. Lowell
20 Peterson, steelworkers.

21 A. Counselor, good afternoon.

22 Q. You've been anticipated. Your
23 declarations are in front of you now, that's
24 great. I want to start though with something

25 a little different, which is the Vandalia fix-

101

1 it program. Are you familiar with that?

2 A. Somewhat, yes sir.

3 Q. In the fall of 2004, the steelworkers
4 negotiated modifications to the contract
5 covering the Vandalia plant at the request of
6 the company. Does that sound right?

7 A. That's correct.

8 Q. Now, one of the agreements there, with
9 respect to the Vandalia fix-it program was
10 that the COLA provisions of the contract would
11 be suspended. In other words, there would be
12 no COLA for the balance of the contract, does
13 that sound right? COLA being, cost of living
14 adjustment.

15 A. I think suspended is the correct word.
16 They weren't eliminated.

17 Q. Well, there wouldn't be any pay increases
18 or any payments because of increases in the
19 cost of living, right?

20 A. That's correct. It would be frozen.

21 Q. So in your declaration, where you said
22 that there are COLA provisions in various
23 collective bargaining agreements, at this
24 point that doesn't include Vandalia, correct?

25 A. I don't think Vandalia, at the current

102

1 time, was a COLA provision that froze.

2 Q. I'm sorry.

3 A. They do not, at the current time, to my
4 understanding, have a COLA provision that
5 continues to escalate up or down. It's
6 frozen.

7 Q. Right. And that was pursuant to the
8 negotiations in the fall of 2004?

9 A. Yes, sir.

10 Q. All right. Now, there was a three
11 percent annual improvement factor in the
12 Vandalia contract also, which has been frozen,
13 pursuant to that fix-it negotiation, correct?

14 A. I'm not positive of that, but it's very
15 possible.

16 Q. There is a 4,000 -- excuse me, four
17 percent performance bonus that was in the
18 contract, and that has been frozen me for the
19 length of the agreement, correct?

20 A. That's probably accurate, but I'm not
21 positive.

22 Q. Shift premiums were reduced, pursuant to
23 that agreement, correct?

24 A. Yes, they were.

25 Q. All right. There were modifications in

103

1 work groups and other language in the
2 contract, correct?

3 A. I'm not aware of what they were, but
4 probably there were.

5 Q. All right. To increase the flexibility

6 of the company in assigning personnel, for
7 example. Is that a fair statement?
8 A. I'm not aware of any specifics but that,
9 you know, that's the sort of thing that you do
10 during bargaining.
11 Q. All right. Let's talk about the
12 attrition program. It's true, isn't it, that
13 the representatives of the steelworkers, that
14 would mostly the Local folks, Dennis Bingham
15 and others from Local 87. You know those
16 folks, right?
17 A. Very well.
18 Q. Yeah. You have negotiated with them over
19 the course of a number of years, right?
20 A. Correct.
21 Q. Now, from really the time of -- sometime
22 December '05, January '06 to the present, Mr.
23 Bingham and others at the Local have asked
24 Delphi to make an attrition proposal to the
25 union, does that sound right?

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1 A. I think during the early part of your
2 timeframe there was dialogue with the United
3 Steelworkers -- excuse me. During the early
4 part of your timeframe, you just identified,
5 there was some preliminary discussions with
6 the United Steelworkers. At the time there
7 was bargaining going on between General Motors
8 and the UAW over this plan. And periodically
9 we would have conversations, dialogue,
10 meetings to, kind of, give the steelworkers,

11 kind of, an update as to what the progress was
12 with those discussions.
13 Q. And the steelworkers -- and you indicated
14 to the steelworkers that it was Delphi's
15 intent to make a similar -- to discuss a
16 similar attrition program with the
17 steelworkers, correct?

18 A. It would be our intent.

19 Q. Uh-huh. And at various points the
20 steelworkers said to you, we would like this
21 proposal. When are we going to get this
22 proposal, is that right?

23 A. That's accurate.

24 Q. And in fact that -- on a number of
25 occasions you said to the steelworkers yes, an

105

1 attrition program is in the works, we will
2 make this proposal to you in the future, is
3 that a fair statement?
4 A. I think that's fair, yes.
5 Q. And the steelworkers said, if you were
6 able to negotiate an attrition program, that
7 will reduce the average wage at our
8 facilities, because the higher paid people
9 would be the people most likely to take the --
10 to attrite under the attrition program, is
11 that accurate?

12 A. I don't recall that statement.

13 Q. You don't recall Mr. Bingham saying to
14 you that an attrition program would make the
15 wages more competitive at the steelworkers

16 representative plants?

17 A. I don't recall him saying that, no.

18 Q. Is it accurate that the people most

19 likely to take -- to attrite under an

20 attrition program would be the higher paid

21 people. That is to the say, the people at the

22 so-called non-competitive wage?

23 A. It depends on the -- what kind of an

24 attrition plan you're running.

25 Q. All right. But that's -- do you recall

106

1 whether that's the kind of attrition program

2 the USW suggested that it thought Delphi was

3 going to make -- going to propose to it?

4 A. Well, the USW was very familiar with the

5 attrition program that was being negotiated

6 between the United Auto Workers and General

7 Motors. They attend all the meetings that the

8 UAW calls. So they are tuned up, they know

9 what's on the table and they, you know, can

10 anticipate what's coming. Our history with

11 the United Steelworkers is pattern bargaining.

12 Q. Well, I don't want to get distracted too

13 much from attrition but you're not saying that

14 the steelworkers attended every meeting

15 between Delphi and the UAW, are you?

16 A. No, I didn't say that. I said, they

17 attend meetings between the UAW and General

18 Motors. And whenever the UAW has a meeting,

19 they invite the steelworkers to the meeting.

20 Q. These are the informational meetings at

21 which --

22 A. Correct.

23 Q. -- the updates are given, correct?

24 A. Correct.

25 Q. All right. You're not talking about

107

1 these steelworkers being invited to

2 negotiations?

3 A. No.

4 Q. All right. So, let's get back to

5 attrition. The first time that Delphi

6 actually made an attrition proposal to the USW

7 was on May 16 of this year, correct?

8 A. I think that's accurate. Was that, like,

9 a Tuesday?

10 Q. Yeah, I think that's Tuesday.

11 A. Yeah, that's accurate.

12 Q. All right. And you had a meeting with

13 the USW in Troy to go over the contents of the

14 attrition program, is that right?

15 A. That's correct.

16 Q. And you referred to that meeting --

17 that's one of the meetings you referred to in

18 your second supplemental affidavit, correct?

19 A. Correct.

20 Q. Now, there was some open items, even in

21 the proposal that were -- that was given to

22 the USW, correct?

23 A. That's correct.

24 Q. Including dates and even some of the

25 dollar figures, is that a fair statement?

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1 A. That's a fair statement.

2 Q. And it wasn't until, I guess, Thursday,

3 May 18, that Delphi made a proposal to the USW

4 that filled in those blanks, is that a fair

5 statement?

6 A. I can't recall if it was the next day or

7 two days later, but, you know, it was in that

8 same -- that timeframe.

9 Q. Okay. And the USW made a counterproposal

10 two days later to the company's attrition

11 program, correct?

12 A. Don't hold me to the date, but yeah. It

13 was certainly after our second proposal that

14 filled in the dates.

15 Q. Okay.

16 A. It might have been the 19th, it might

17 have been the 20th. It might have been on the

18 weekend because we -- we went all weekend.

19 Q. Yeah. The USW people stayed in Troy

20 until this past Monday, the 22nd, correct?

21 A. That's correct.

22 Q. Now, let me ask you a little bit about

23 the attrition proposal. Not so much the

24 details of it, because this is a work in

25 progress, but when the company presented this

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1 attrition proposal to the union, did it say

2 that this was part of the 1113 term sheet.

3 That is to say, the proposed modifications to
4 the collective bargaining agreement?

5 A. I'd have to look at the actual document
6 to see how it's titled.

7 Q. Well, is the attrition program -- let me
8 phrase this a different way. Is the proposed
9 attrition -- the attrition program proposed by
10 Delphi bound to the USW agreement to other
11 modific -- or to modifications in the current
12 collective bargaining agreement?

13 A. Yes. The way we've agreed to proceed
14 with the steelworkers is a one-step process.

15 Q. Well --

16 A. Everything is included before anything is
17 finalized.

18 Q. Well, the steelworkers haven't agreed to
19 that.

20 A. Yes, I believe they have.

21 Q. You're saying the steelworkers have
22 agreed that they don't get an attrition
23 program unless they agree to cut their
24 contract?

25 A. They said that it is part of the total

110

1 package. Nothing is settled until everything
2 is settled.

3 Q. Well, the steelworkers have told you that
4 they believe that an attrition program is a
5 necessary first step to addressing Delphi's
6 labor cost, isn't that the way they put it?

7 A. No, sir. That is not the way they put

8 it.

9 Q. Is Delphi willing to negotiate an
10 attrition program without reductions in wages
11 by the steelworkers?

12 A. Our plan is to proceed as we've agreed
13 with the union and that's to try to wrap
14 everything up all at one time.

15 Q. All right. Now, have you done an
16 analysis -- you Delphi, are you familiar with
17 an analysis by Delphi of the impact of this
18 attrition proposal on Delphi's steelworkers
19 represented workforce, headcount, wages,
20 etcetera?

21 A. Can you be more specific?

22 Q. Well, have you looked at what -- how many
23 people are going to take the attrition
24 proposal, for example?

25 A. We've modeled it, yes, sir.

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1 Q. And what do your models indicate in terms
2 of the effect on the wage rate? The actual
3 wage rate.

4 A. Well, the attrition plan, itself, doesn't
5 impact the wage rate. It will just reduce
6 people from the workforce through retirement.

7 Q. Right. But have you identified what wages
8 the people who are likely to take the
9 attrition are currently making?

10 A. Well, I think, historically, it would be
11 your higher seniority employees.

12 Q. Right.

13 A. Those are the one who would have; you
14 know, enough years to qualify for the
15 attrition plan.
16 Q. Right.
17 A. Right.
18 Q. It would mostly be the people earning
19 the, so-called, traditional wage, right?
20 A. I think that's accurate.
21 Q. All right. So the people who are earning
22 the starting rate of eight dollars or ten
23 dollars an hour, probably do not have enough
24 seniority to qualify under the attrition
25 program, correct?

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1 A. I'd agree with that.
2 Q. All right. So, in fact the average
3 wages, if you will, in the steelworkers unit,
4 would be reduced as people took these --
5 A. Yeah, they probably would.
6 Q. But have you analyzed how much?
7 A. I have not.
8 Q. Now, when you made the proposal to the
9 steelworkers for an attrition program, did you
10 say whether General Motors had agreed to fund
11 it?
12 A. No, we did not say it was contingent.
13 Q. I want to make sure I understood your
14 answer. You said it was contingent on GM
15 funding it, correct?
16 A. Yes, sir.
17 Q. All right. And you also said that GM had

18 not agreed to fund it, correct?

19 A. That's correct.

20 Q. So, if GM doesn't fund it, there's no

21 attrition program, correct?

22 A. Not the way it's designed there. It'll

23 have to be rebargained.

24 Q. USW has never demanded a "me too"

25 approach to bargaining here, has it?

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1 A. In this context?

2 Q. This round, yes. This time around.

3 A. Not that I'm aware of.

4 Q. Okay. If you could take a look at your

5 supplemental declaration and I wish I could

6 tell you I knew the exhibit number, but I --

7 MR. BUTLER: Which one?

8 MR. PETERSON: The supplemental.

9 MR. BUTLER: The first one is 12.

10 MR. PETERSON: Twelve. Thank you.

11 MR. BUTLER: The second one is 279.

12 Q. All right.

13 A. Okay. The exhibit?

14 Q. Yeah, the last page. Delphi USWA

15 Meetings. This is the supplemental. Yeah,

16 he's got it. All right, this is the chart. I

17 just want to go through them. The first one

18 you have on the chart is October 25, 2005.

19 You see that?

20 A. Yes, sir.

21 Q. That's the meeting at which the company

22 presented its October 1113 proposals to the

23 union, correct?

24 A. I think that's correct.

25 Q. All right. And those, I think we've

114

1 established, those were all withdrawn in

2 December of 2005, correct?

3 A. Conditionally withdrawn, yes.

4 Q. Okay. So the meetings -- the next

5 meeting on the list here is February 21, 2006?

6 A. That's the next meeting on this list,

7 correct.

8 Q. There was no contract modification

9 proposal on the table during that meeting,

10 correct?

11 A. Well, as I said, the one that was

12 withdrawn in December was a conditional

13 withdrawal.

14 Q. Well, conditioned on what?

15 A. It was conditioned on continuing to

16 bargain with our unions to try to get some

17 additional financial relief from General

18 Motors, but in the absence of that, the

19 October or the November 15th proposal was

20 still on the table.

21 Q. Well, that isn't what you discussed. You

22 didn't discuss the details of the November or

23 October proposal at this February 21 meeting

24 with the Steelworkers, correct?

25 A. I'm trying to remember what we -- you

1 know -- what we did discuss at that meeting.

2 My recollection is that we had a site walk
3 review with the Steelworkers during that
4 meeting which is part and parcel to our total
5 consensual proposal.

6 Q. Site walk review at Home Avenue?

7 A. Right.

8 Q. "Site walk review" means going around the
9 plant and doing what?

10 A. No, site walk review means what our
11 proposal contains vis-a-vis what plants we're
12 going to keep, sell, close and that's what we
13 reviewed.

14 Q. All right. And as of February 21, 2006,
15 had a determination been made to sell or close
16 the Home Avenue facility?

17 A. Yes.

18 Q. And this was -- you informed the
19 Steelworkers of that at that time?

20 A. Yes, we did.

21 Q. All right. That was the content of that
22 meeting?

23 A. That was the principal content, right.

24 Q. All right. Next one is March 21 in Troy.
25 Again, there was no bargaining proposal on the

1 table subject to your comment about it being
2 having been conditionally withdrawn, correct?

3 A. There wasn't any additional one put on

4 the table, that's correct.

5 Q. All right. The next two you've got, also
6 at the hotel in Troy, March 22 and March 23,
7 those are listed as joint meetings. Those
8 were big sessions at which a number of unions
9 got together and heard presentations about the
10 status of negotiations with the UAW, correct?

11 A. My recollection was that we did have
12 multi-unions, the IUE and the Steelworkers, in
13 some of the meetings. The meetings were also
14 attended by Delphi corporate folks as well as
15 General Motors executives. And again, we
16 walked through the site review plants with the
17 full committee so that everybody knew exactly
18 what was contained in our proposal.

19 Q. So that was what happened on the 22nd and
20 23rd? These were these big meetings attended
21 by GM, Delphi, the three major unions and
22 these were presentations of information about
23 what the company planned to do in terms of its
24 footprint, if you will?

25 A. The UAW was not present.

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1 Q. All right. Steelworkers and IUE, GM,
2 Delphi talking about the business plan, if you
3 will?

4 A. Right.

5 Q. Okay. Now, the next one here is March
6 30. Now, that is, I take it, after the
7 company had tendered the dual proposal to the
8 Steelworkers that is the subject of this

9 proceeding? That is to say, the competitive
10 benchmark and GM consensual proposal? You
11 recognize what I'm referring to with those
12 terms?

13 A. Yes, sir, and that's accurate.

14 Q. Okay. On March 30, do you recall how
15 long that meeting lasted?

16 A. Three hours perhaps.

17 Q. And that was an information meeting and
18 the union was asking questions about specific
19 details in the company's proposals, correct?

20 A. Part of the bargaining process, correct.

21 Q. That's been part of the bargaining
22 process you've gone through with the USW over
23 the years, correct?

24 A. Correct.

25 Q. It takes some time to go through the

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1 proposals and talk through what exactly they
2 mean and how they would work, correct?

3 A. That's correct.

4 Q. And that's what happened here?

5 A. That's correct.

6 Q. All right. And at that meeting, Delphi
7 indicated that it needed General Motors'
8 support to make the GM consensual proposals
9 work, correct?

10 A. That's correct.

11 Q. And that GM support had not yet been
12 committed to, correct?

13 A. That's correct.

14 Q. The next meeting listed here is April 4,
15 2006 back in Troy. It says "Health Care."
16 That was a meeting at which the union asked
17 questions about the company's health care
18 proposals, correct?

19 A. Yeah. At the meeting in Dayton on the
20 30th, there were a number of issues that came
21 up that we needed to do some more research on
22 and we agreed to do that and try to get back
23 with the Steelworkers as quick as possible.
24 And the meetings we set up at Troy the
25 following week were intended to, in fact, do

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1 that.

2 Q. So, what you were talking about on the
3 4th were answers to some questions about the
4 health care proposals?

5 A. Yes, sir.

6 Q. And additional -- the union asked some
7 additional questions based on those answers,
8 correct?

9 A. I'm sure they did.

10 Q. There was a fair amount of change
11 involved in the health care proposal, correct?

12 A. That's correct.

13 Q. Union wanted to know how it would affect
14 its members in some detail, correct?

15 A. Yes, sir.

16 Q. Union asked some questions about the cost
17 savings that Delphi expected from these
18 proposed changes, correct?

19 A. Yes, they did.

20 Q. And, in fact, even on April 4, the
21 company said well, we'll have to get back to
22 you with answers to some of your questions
23 about the health care plan, correct?

24 A. That's my recollection.

25 Q. Let me take you down to the next day,

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1 April 5. It says "Pensions." I gather that
2 was a meeting at which Delphi answered some of
3 the unions' questions about the pension plan
4 proposals, correct?

5 A. That's correct.

6 Q. And the union asked for -- asked more
7 questions based on those answers, correct?

8 A. I'm sure they did.

9 Q. And even at that point, the company said,
10 well, we have to get back to you with some of
11 the answers to some of your questions,
12 correct?

13 A. That's correct.

14 Q. All right. The next meetings listed here
15 are April 6 and April 12 of this year. April
16 6th is "Vandalia Transformation" and the 12th
17 is "Transformation Sheet." Let me start with
18 April 6th. What do you mean by "Vandalia
19 Transformation"?

20 A. I can't recall if I was in that meeting,
21 but I can give you generally what I believe
22 the meeting was about.

23 Q. I thought this exhibit indicated that

24 these were the meetings that you personally
25 attended.

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1 A. Yeah, maybe I was at that one. There's
2 been two or three on this particular topic and
3 your -- if that's what the record shows. I
4 was at one of them, that's correct.

5 Q. Well, so, the one that you were at, and
6 let's presume it was April 6th --

7 A. All right.

8 Q. -- what was discussed?

9 A. All right. Generally, the discussion
10 centered around what the company's proposal
11 was for the Vandalia site going forward. The
12 products that were there, what the intent was
13 to do with those products and the intent as to
14 what products would be coming in to backfill
15 the products that were leaving. So that's the
16 transformation piece.

17 Q. Is it transformation, if you will, of the
18 product line at Vandalia?

19 A. Correct.

20 Q. All right. And, broadly speaking, that
21 could be summarized by saying the Vandalia
22 plant will be focused more on thermal products
23 now and the non-thermal products would be sent
24 elsewhere or discontinued. Is that a fair
25 summary of the discussion?

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1 A. Yes, it is.

2 Q. Because that's a potentially profitable
3 product line for Delphi to be in, correct?

4 A. It's a plant that we would like to keep
5 operating and make money at, correct?

6 Q. In the thermal area?

7 A. Correct.

8 Q. All right. Now, the April 12 meeting
9 back in Dayton, that was a short meeting,
10 wasn't it, if you recall?

11 A. I can't recall.

12 Q. Is it fair to characterize as an update
13 on the sort of product transformation
14 discussions that had taken place on the 6th?

15 A. Again, I can't recall.

16 Q. Let me ask you about your second
17 supplemental affidavit -- excuse me,
18 declaration. 279, I think. I want to get a
19 sense of what the discussions have been. I
20 guess, the discussions started on -- that you
21 were involved in started on May 16, according
22 to your supplemental -- second supplemental
23 declaration. If you want to take a look at it
24 to refresh your recollection, that's fine with
25 me. USW stuff starts on page 3. You didn't

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1 participate in the May 15 discussions,
2 correct? That's the Monday.

3 A. No, that was done at TNI headquarters and
4 I was meeting, I believe, with the IUE at the
5 time, so I was not there.

6 Q. So, I think you've testified that, to the
7 best of your recollection, that Tuesday, the
8 May 16th, is when Delphi first presented an
9 attrition proposal to the USW?

10 A. Yes, sir.

11 Q. Okay. That was the subject of the
12 meeting on the 16th. Delphi went through the
13 terms of its proposal and the union asked it
14 some questions, correct?

15 A. Yes.

16 Q. All right. That meeting lasted
17 approximately 45 minutes?

18 A. That's probably close.

19 Q. Now, the next USW meeting you mention is
20 May 19 and you say "members of my staff met
21 with the USW." Were you not present at that
22 meeting?

23 A. I was not.

24 Q. Then I won't ask you a lot of details,
25 but is it your understanding that that meeting

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1 was to discuss information that the union
2 needed to evaluate the attrition proposal?

3 A. No, I think the meeting was focused on
4 Vandalia as opposed to the attrition program.

5 Q. All right. That's the transformation
6 plan again?

7 A. Yes, sir.

8 Q. All right. You mention a Sunday, May 21
9 meeting. That's the meeting at which the USW
10 made its counterproposal to the attrition

11 program, correct?

12 A. That's my recollection.

13 Q. All right. It is what you said in

14 Paragraph 9. And the next day, Monday, that

15 meeting lasted about an hour, correct? You

16 discussed subcommittees to break down the

17 various issues still to be discussed between

18 the parties and how to go forward in the

19 discussions. Is that a fair characterization

20 of Monday's meeting?

21 A. Yes, I think we were setting the stage

22 for how bargaining was going to proceed.

23 Q. Now, in the course of these Vandalia

24 transformation discussions, the company hasn't

25 proposed greater wage cuts than the wage cuts

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1 it proposes in its 1113 proposals, has it?

2 A. Define "greater."

3 Q. Cutting more -- cutting wages lower.

4 Cutting more off the wages than it is proposed

5 in the 1113 proposals.

6 A. I believe there is a lower floor, yes.

7 Q. So, the company's got three sets of

8 proposals on the table now. The competitive

9 benchmark, the GM consensual and now an even

10 lower proposed set of wages in connection with

11 Vandalia. Is that a fair statement?

12 A. We have plant specific issues at Vandalia

13 that are different than some of our other

14 operations. And part --

15 Q. No, I'm focusing on the wage proposals.

16 A. Right.

17 Q. Yeah. So you got three sets of wage

18 proposals on the table. Is that a fair

19 statement?

20 A. We've got the benchmark proposal; we've

21 got the GM consensual proposal and this Local

22 proposal. That's right.

23 Q. And the Local is the lowest of all?

24 A. Yes, it is.

25 Q. And Home Avenue is scheduled to be sold

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1 or closed, correct?

2 A. We're talking about Vandalia. Are you

3 switching --

4 Q. No, Home Avenue is going to be closed or

5 sold, correct?

6 A. We were talking about Vandalia before.

7 Q. I know. I'm asking you a question.

8 That's right.

9 A. Okay. Yes. Yes, sir, it is.

10 Q. So, the only going forward work force is

11 going to be Vandalia?

12 A. That's our proposal.

13 Q. Right. So these three sets of proposals

14 would affect Vandalia?

15 A. Portions of them, yes.

16 Q. What is it exactly that you're proposing

17 in the way of a wage rate at Vandalia under

18 Number 3 here?

19 A. I think our proposal, and again, it's all

20 being bargained as we speak, we had a meeting

21 yesterday and I think there's another meeting
22 today at the plant to continue dialogue, but
23 the proposal is to take the wages down through
24 a step-down process to the tier 3 wage that's
25 currently in existence at the plant.

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1 Q. That's eight dollars an hour.
2 A. Growing to ten, I believe.
3 Q. If you'll take a look at the March 24
4 1113 proposals, I think that's an exhibit to
5 Exhibit 7. It might take you a couple of
6 minutes to get there to find the USW specific
7 proposals.
8 All right. Well, since we're fiddling
9 with documents, Mr. Butler suggests maybe we
10 should take a break now, the sort of afternoon
11 break. I don't have a problem with that.
12 MR. BUTLER: If it's acceptable,
13 Your Honor, we've been here about two and a
14 half hours. If it would be possible to take a
15 short break.
16 THE COURT: All right. It might
17 help people find this particular document.
18 MR. BUTLER: Yeah, I think that's
19 right.
20 THE COURT: All right. I'll be back
21 at ten after four.
22 MR. BUTLER: Thank you, Your Honor.
23 MR. PETERSON: Thank you, Your
24 Honor.
25 (Recess from 3:57 p.m. until 4:18

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1 p.m.)

2 THE COURT: Please be seated. Okay.

3 Back on the record in Delphi. You're still
4 under oath, sir.

5 DIRECT EXAMINATION

6 BY MR. PETERSON:

7 Q. I think we've determined that the most
8 efficient route is to look at Exhibit 91 which
9 I think you have in front of you.

10 A. Yes, sir.

11 Q. This is the March 24 proposal to the USW,
12 correct?

13 A. Correct.

14 Q. All right. If you'll take a look at page
15 12 at the bottom.

16 A. Yes, sir.

17 Q. It says "Traditional and Tier 2 employees
18 at the TNI and Vandalia site will be converted
19 to Tier 3 wages and benefits on July 3, 2006
20 or as soon as practicable thereafter." In
21 fact, Delphi is proposing that everyone at
22 Vandalia go down to eight dollars an hour
23 rising to ten dollars an hour, no matter which
24 proposal is on the table, isn't that a fair
25 statement?

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1 A. Our proposal is that they go down to Tier

2 3 wages, that's correct.

3 Q. All right. Regardless of whether GM

4 kicks in any money?

5 A. No, this proposal is contingent on GM

6 support.

7 Q. Well, the only -- if you'll read up to

8 the top of the next page, just to refresh your

9 recollection, the only piece of this that's

10 contingent on GM is payment of 35,000 dollars

11 to go down to eight dollars an hour, correct?

12 A. That's the way it reads, you're right.

13 Q. So, no matter what happens, people in

14 Vandalia are going to go down to eight bucks

15 an hour. Is that a fair statement of what the

16 company proposes?

17 A. That's our proposal. To Tier 3 wages.

18 Q. Tier 3 is eight dollars an hour?

19 A. For a new hire, that's correct.

20 Q. Increasing to ten dollars an hour after a

21 number of years, correct?

22 A. Correct.

23 Q. And if General Motors doesn't kick in any

24 money, they don't even get a buy down for

25 that, correct?

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1 A. That's correct.

2 Q. All right. And they also go to the

3 reduced benefit -- medical benefit levels that

4 the Tier 3 employees currently get, correct?

5 I think it says "converted to Tier 3 wages and

6 benefits on July 3, 2006."

7 A. That's correct.

8 Q. And it changes their pension benefits

9 that would be taken out of the defined benefit

10 plan, too, correct? Pension plan?

11 A. I'm not sure what plan they're in.

12 Q. Well, the Tier 3s at Vandalia are not in

13 the defined benefit pension plan, are they?

14 A. I don't think they are, that's correct.

15 Q. Do you know what the so-called

16 competitive wage identified by Delphi's expert

17 is for production employees?

18 A. Twenty-two dollars all-in, as I recall.

19 Q. All right. The Tier 3s are significantly

20 below 22 dollars all-in, aren't they?

21 A. No, sir, they're not.

22 Q. Well, you've proposed an 18 dollar and 69

23 cent all-in cost at Vandalia, haven't you?

24 A. I think there's a range from 18 to 21.

25 Q. All right. That's below market, isn't

131

1 it? According to your expert?

2 A. It's right on the cusp.

3 Q. Now, have you had discussions with

4 General Motors or are you aware of discussions

5 with General Motors about funding the USW

6 component of the 1113 proposals?

7 A. I, personally, have not.

8 Q. Do you have any reason to think that GM

9 would fund just the USW component without

10 first agreeing to fund the UAW of the GM

11 consensual proposal?

12 A. Would you repeat the question, please?

13 Q. Do you have any reason to think that GM

14 would fund the USW GM consensual proposals

15 before agreeing to fund the UAW GM consensual

16 proposals?

17 A. They've already funded the UAW GM

18 consensual proposals.

19 THE COURT: No, not the attrition.

20 MR. PETERSON: Not the attrition

21 program.

22 THE COURT: The --

23 THE WITNESS: UAW GM is what you

24 said, right?

25 Q. I did say UAW GM. They've already funded

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1 the --

2 THE COURT: I think you're confusing

3 the attrition program with the March 24

4 proposal that's labeled the "Consensual GM

5 Proposal."

6 Q. I'll ask the question in a different way.

7 It's -- you mentioned the word "pattern."

8 This is probably a more efficient way of doing

9 it. You mentioned "pattern bargaining"

10 earlier in your testimony. Isn't it the case

11 that to ultimately reaching a deal with the

12 USW is going to have to wait until after the

13 broader deal is reached with -- between Delphi

14 and UAW?

15 A. If we follow what pattern bargaining has

16 been in the past, that's accurate.

17 Q. And that's what you're following this
18 time, correct?
19 A. We can get a deal anytime they want to
20 make us a counterproposal.
21 Q. But, in fact, you used the phrase
22 "pattern bargaining." In fact, what you have
23 talked about with the USW is continuing to
24 follow the pattern bargaining process this
25 time around also, correct?

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1 A. I wouldn't characterize it that way.
2 Q. What do you think the likelihood of
3 reaching an agreement with the USW that
4 includes GM money is -- the likelihood of
5 reaching that agreement before the UAW and --
6 and Delphi and UAW reach an agreement. What
7 do you -- in your experience as a bargainer,
8 what do you think the odds of that happening
9 are?

10 A. I think it's very possible.

11 Q. Really?

12 A. Yes.

13 Q. Okay.

14 MR. PETERSON: No further questions.

15 THE COURT: Okay.

16 DIRECT EXAMINATION

17 BY MR. KENNEDY:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. Mr. Quick, you are responsible in

21 Delphi's hierarchy for negotiating or

22 overseeing the negotiation of Delphi's
23 agreements with the IUE-CWA , correct?
24 A. That's accurate.
25 Q. And how long have you had that

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1 responsibility?
2 A. I think 1999.
3 Q. So, from 1999 until the present you've
4 had that responsibility for Delphi?
5 A. Yes, sir.
6 Q. And how would you characterize the
7 relationship between IUE-CWA and Delphi, the
8 collective bargaining relationship?
9 A. Excellent.
10 Q. Has the IUE-CWA been cooperative with
11 Delphi in responding to competitive pressures
12 facing Delphi plants?
13 A. To a degree, yes, they have.
14 Q. Well, is the Kettering, Ohio IUE facility
15 an example where the IUE-CWA has agreed with
16 the company to terms and conditions of
17 employment that help make the plant more
18 competitive?
19 A. They have agreed to a tool that could, in
20 fact, make it more competitive but it hasn't.
21 Q. And that tool is the special tier
22 allowing individuals to be hired at eight
23 dollars an hour, correct?
24 A. That's part of it.
25 Q. And there are other reductions in wage --

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1 in benefits that go along with that particular
2 employment tier, correct?

3 A. That's correct.

4 Q. Now, the IUE-CWA doesn't decide which
5 product and which work is going to be assigned
6 to the Kettering facility, does it?

7 A. No, they do not.

8 Q. That is a decision made by Delphi and its
9 wisdom as to where to assign its various
10 production capacity, correct?

11 A. Correct.

12 Q. Do you know a man by the name of Keith
13 Bailey?

14 A. Yes, I do.

15 Q. And who is Mr. Bailey?

16 A. He is currently the chairman of the shop
17 committee for Local 755, Kettering, Ohio.

18 Q. And for those who don't know, is that a
19 responsible position, an important position in
20 an IUE-CWA Local?

21 A. Yeah. He's the lead chief bargainer for
22 the Local. Very important position.

23 Q. And did you review Mr. Keith Bailey's
24 declaration that he submitted in this case,
25 which is Exhibit 28, if you care to take

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1 another look at it?

2 A. I remember reviewing it.

3 Q. And isn't it a fact that he accurately

4 recites steps that have been taken by Local
5 755 to create competitive agreements with
6 Delphi?
7 A. My recollection is that what he outlined
8 in his declaration was accurate, yes.
9 Q. Now, did it take a Section 1113
10 proceeding to secure the IUE-CWA's cooperation
11 at Kettering to try to make the plant more
12 competitive?
13 A. Would you repeat the question?
14 Q. Sure. This is the first time that
15 Delphi's filed the Section 1113 proceedings
16 that has anything to do with Kettering,
17 correct?
18 A. Correct.
19 Q. And those prior agreements that have been
20 made in the past at Kettering were not
21 produced under the stimulus of a Section 1113
22 proceeding, were they?
23 A. That's correct.
24 Q. Isn't it also accurate to state that at
25 Warren, Ohio, IUE-CWA is entered into

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1 competitive agreements to make the plant more
2 productive and competitive?
3 A. They have entered into agreements that
4 had that -- if we could get to them could, in
5 fact, perhaps make the plant more productive
6 and competitive, that's correct.
7 Q. Well, do you know Mr. Don Arbogast?
8 A. Yes, I do.

9 Q. And what position does he hold with the

10 IUE Local at Warren, which is Local 717?

11 A. He has the same capacity that Mr. Bailey

12 has at Warren, Ohio.

13 Q. Did you have a chance to review his

14 declaration in this case?

15 A. Yes, I did.

16 Q. And would you also agree that he

17 accurately sets forth the steps that Local 717

18 has taken to make the Warren facility more

19 competitive?

20 MR. BERKE: Objection. If you're

21 going to refer to the accuracy of a

22 substantially long document, I think you

23 should be in front of the witness.

24 THE COURT: Do you want to review

25 the declaration or are you familiar with it

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1 enough to --

2 MR. KENNEDY: I could also refer the

3 witness to his deposition at page 12, lines 10

4 to 17, Your Honor, where he so testified.

5 THE COURT: Okay.

6 Q. Would you prefer to be reminded of your

7 deposition?

8 A. No, I think in my deposition, I also

9 indicated that what Mr. Arbogast set forth in

10 his declaration was accurate.

11 Q. Okay. Now, would you agree with me, Mr.

12 Quick, that 1,910 IUE-CWA represented

13 employees are employed on competitive

14 agreements that provide less than the
15 traditional wages and benefits paid to
16 Delphi's workers?
17 A. In part, I would agree with that
18 statement.
19 Q. Okay. Well, you would certainly agree
20 that their are 1,910 IUE represented employees
21 receiving less than traditional wages,
22 correct?
23 A. Correct.
24 Q. And that number does not include the
25 employees at Kettering who are below

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1 traditional wage rate because they took a
2 four-year wage freeze, isn't that also true?
3 A. That's correct.
4 Q. Would you agree with me that more than 25
5 percent of the IUE-CWA represented employees
6 are receiving wages below what the company has
7 identified as the traditional wage in this
8 proceeding?
9 A. No, I would not.
10 Q. What percentage would you estimate of the
11 8,400 IUE-CWA represented Delphi employees are
12 receiving less than the traditional wages that
13 Delphi has identified in this proceeding?
14 MR. BERKE: Objection to the form of
15 the question. "Wages", does it mean wage rate
16 or all-in wage cost?
17 Q. All right. That's a fair question. I'm
18 referring to hourly wages, take home pay,

19 actual wage rate in effect.
20 A. Wage rate in effect?
21 Q. Yeah.
22 A. Ten to twelve percent.
23 Q. Does that include the Kettering people?
24 A. No, it does not.
25 Q. If you added the Kettering people, what

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1 would the percentage be?
2 A. What was the question again?
3 Q. What is the percentage of -- well, let me
4 ask this so we're clear about our comparison.
5 Delphi has identified its traditional hourly
6 wage for production employees as 27 dollars an
7 hour, correct?
8 A. Correct.
9 Q. And you've just told us that ten or
10 twelve percent of IUE-CWA represented
11 employees make less than that. Is that what
12 you intended to say?
13 A. That's not the way you asked the
14 question.
15 Q. Well, if I need to be corrected, I
16 appreciate it. If we look at the wage rate of
17 27 dollars an hour, what percentage of IUE-CWA
18 represented employees are earning an hourly
19 wage rate less than that?
20 A. Well, it would be your 1,910 you
21 identified.
22 Q. Yeah.
23 A. And if you're talking about the folks at

24 Kettering that took a freeze, you'd have to
25 add that number in there.

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1 Q. All right. So, there's about 500 people
2 at Kettering that took the freeze, correct?
3 A. Right.
4 Q. So, that's about 2,400 people?
5 A. If you took a snapshot today, that's
6 correct. It changes.
7 Q. Yeah.
8 A. It moves.
9 Q. Okay. Well, looking at today, the
10 percentage we would have to calculate would be
11 what percentage 2,400 represents of 8,400?
12 A. That's fair.
13 Q. Okay. Now, I'd like to direct your
14 attention to paragraph 10 of your initial
15 declaration which is in evidence as --
16 actually, I guess it's proposed to be in
17 evidence as number 11. Are you there?
18 A. Yes, sir.
19 Q. Okay. Now, you identified wage rate
20 ranges for the seven IUE-CWA represented
21 facilities, correct?
22 A. Base wage rate ranges, yes.
23 Q. Okay. Now, the top end of those rates,
24 let's look at, for instance, Kettering, which
25 says 30 dollars and 36 cents. Those are

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1 skilled trade rates, aren't they?

2 A. That's correct.

3 Q. So that your base wage rate comparison is
4 from the lowest paid individual in the shop up
5 to the highest paid individual in the shop,
6 correct?

7 A. That's what the table is about.

8 Q. Okay.

9 A. Wage rate range.

10 Q. Now, if you had presented a wage rate
11 range which was focusing on production
12 employees, what would the top end of the rates
13 be at the seven facilities? Do you know?

14 A. Without looking it up, I would say that
15 with the exception of Gadsden, they would all
16 be at the 27 dollar range.

17 Q. Okay. So, these five of the seven rates
18 that are 30 dollars and above don't accurately
19 reflect the top end production rates at IUE
20 facilities, do they?

21 A. No, that wasn't the intent of the chart.

22 Q. Okay. And the individuals who are making
23 the 30 dollar rates, they are typically
24 plumbers, pipe fitters, electricians, mill
25 rights, those sorts of skilled jobs?

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1 A. That's accurate.

2 Q. Now, have you performed an analysis of
3 the average production rates at these
4 facilities?

5 A. I personally have not.

6 Q. Well, are you aware of such an

7 analysis -- I mean, it wouldn't be all that

8 hard -- having been done by Delphi at these

9 facilities?

10 A. I believe it's been done, yes.

11 Q. Do you know the information? Do you know

12 what the average rates are?

13 A. No, I don't. I don't have it.

14 Q. If I told you that the average rate at

15 Gadsden was below ten dollars an hour, would

16 that sound right to you?

17 A. It'd be close -- close to ten bucks

18 probably.

19 Q. And the average rate in Kettering is

20 below 20 dollars an hour, about 18?

21 A. I think it's a little higher than that.

22 Q. You think it's below 20?

23 A. Perhaps.

24 Q. I'd like to direct your attention, Mr.

25 Quick, to Exhibit 187 which I believe is in

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1 one of the confidential -- yes, it's one of

2 the confidential volumes. Now, that document

3 is entitled "Estimated Benchmark Comparison."

4 A. Yes, sir.

5 Q. You've seen that before, correct?

6 A. Yes, I have.

7 Q. And that document was prepared by Delphi?

8 A. Yes, it was.

9 Q. It was prepared in response to a request

10 by the IUE-CWA to benchmark where the
11 Kettering plant would fall given the Tier 3
12 wages and benefits, is that correct?
13 A. It appears that's the reason, yes. I
14 didn't prepare it, but it --
15 Q. Well, you are --
16 A. It spells out Kettering on the chart.
17 Q. And you're the corporate official
18 responsible for negotiations with the IUE,
19 correct?
20 A. That's correct.
21 Q. So, isn't accurate to state that if you
22 look at the benchmark comparisons Delphi has
23 chosen to exemplify where it wants to be at
24 the 21 dollar rate, the Kettering all-in rate
25 is 18 dollars and 79 cents?

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1 A. Correct.
2 Q. And that, in fact, is below six of the
3 eight comparators that Delphi selected as
4 appropriate comparisons, isn't that also
5 correct?
6 A. It appears to be correct, yes.
7 Q. I'd like to direct your attention to your
8 second supplemental declaration, which is
9 number 279. You have that in front of you,
10 sir?
11 A. Yes, sir.
12 Q. All right. Examining paragraph 5, would
13 you read into the record for purposes of
14 framing some questions the first sentence of

15 that paragraph?

16 A. "On Saturday, May 20, 2006, the IUE-CWA
17 offered additional responses indicating that
18 they would like an agreement patterned on
19 economics of any agreement reached between
20 Delphi and the UAW."

21 Q. Okay, thank you. Now, attached to your
22 second supplemental declaration, as Exhibits
23 A,B and C, are written counterproposals IUE-
24 CWA has made to Delphi prior to today,
25 correct?

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1 A. Correct.

2 Q. Exhibit A is a counterproposal that was
3 provided on May 18th and Exhibit B is a
4 counterproposal dated May 20th and C is a
5 counterproposal dated May 21st, correct?

6 A. Correct.

7 Q. Now, is it your contention that the
8 language of any of these three
9 counterproposals indicates that IUE-CWA would
10 like an agreement pattern on the economics of
11 any agreement reached between Delphi and UAW?

12 A. If you look at the second half of Exhibit
13 A, page 2, Exhibit A --

14 Q. I'm just puzzled by the second half. You
15 mean --

16 A. Well, it's page 2 --

17 Q. I see, okay.

18 A. It's printed on both sides of the page.

19 Q. Gotcha. Okay.

20 A. The one entitled "Holidays."
21 Q. Uh-huh. All right.
22 A. This is an example.
23 Q. Okay. And the example there is that
24 similar to the notion of trying to take the
25 high side but not taking the down side that

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1 the Court was referring to earlier, the IUE
2 said we'll agree to this particular proposal
3 but if the UAW gets more, we want that, too.
4 A. Or less. Both. They asked for pattern.
5 Q. Okay. Now, what other parts of this
6 proposal, either A, B or C, indicate that
7 apart from holidays, IUE-CWA is looking to buy
8 into whatever it is the UAW negotiates?
9 A. Well, I think the inference is there
10 based on the responses to all the economic
11 provisions of their counterproposal. They say
12 they want to wait and see.
13 Q. Well, actually, would you point out to me
14 where the words "wait and see" appear on any
15 of these three counterproposals?
16 A. Those aren't the right words.
17 Q. Okay. In fact, isn't the words that
18 appear, and I'm referring primarily to Exhibit
19 B, if we look for instance with respect to the
20 COLA response which appears on the fourth page
21 of Exhibit B, it says "IUE-CWA defer" -- I
22 assume that means prefers -- "to be discussed
23 as one economic package." Isn't that the
24 language that IUE-CWA used in responding to

25 certain of your economic terms?

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1 A. Yes, it is.

2 Q. And that is language that you interpret
3 as saying that they'll take what the UAW
4 provides? That the UAW gets?

5 A. In the absence of a proposal, yes, sir.

6 Q. All right. Well, would you turn to
7 Exhibit 186? Do you recognize the Exhibit
8 186, sir? It's intended to be a letter.

9 A. I must have the wrong exhibit. This is a
10 Butler exhibit. Exhibit 1, is that what
11 you're referring to?

12 Q. Oh, I know what it is. It's the last
13 page of 186, that's what it is.

14 A. A letter?

15 Q. I think the last page of Exhibit 186 is a
16 letter from Henry Reichert to Kevin Butler?

17 A. I don't find it here.

18 Q. Okay. It's marked as Exhibit 11 in the
19 Butler deposition.

20 MR. KENNEDY: May I approach and
21 show him, Your Honor?

22 THE COURT: It's the last page of
23 all the exhibits to that exhibit.

24 THE WITNESS: I think -- I may have
25 found it here. Is it dated October 31st?

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1 MR. KENNEDY: No, it's dated March

2 31st. Could I approach, Your Honor?

3 THE COURT: Yes.

4 MR. KENNEDY: All right.

5 Q. Now, just for the record, Mr. Quick, who

6 is Henry Reichard?

7 A. Henry is the chairman of the IUE

8 automotive conference board.

9 Q. Is it accurate to state that he is the

10 official in the IUE-CWA who bears the primary

11 responsibility for negotiating with Delphi?

12 A. Yes, it is.

13 Q. Would you look at the fourth paragraph of

14 that letter dated March 31st? Would you read

15 the first three sentences of that paragraph

16 into the record, please? They're pretty

17 short.

18 A. This is a letter from Henry Reichard

19 dated March 31, 2006 to Mr. Kevin Butler,

20 Delphi Corporation. Fourth paragraph:

21 "Delphi chose to limit its negotiations for

22 months to the UAW. Our members have had their

23 own contracts and their own priorities with

24 Delphi. Your need to negotiate with the IUE-

25 CWA is not met by meeting with any other

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1 union."

2 Q. Thank you. Did you or Mr. Butler or

3 anyone else from Delphi respond in writing to

4 Mr. Reichard's letter of March 31st, 2006?

5 A. I'm not aware of a written response.

6 Q. Okay. And would you agree with me that

7 that's a pretty strong statement by Mr.
8 Reichard on March 31st after this or as this
9 hearing was being begun that only negotiations
10 directly with the IUE-CWA are going to get an
11 agreement?
12 A. Well, it is what it is.
13 Q. Okay. But given that statement, how can
14 you infer from the proposals provided on May
15 20th which indicate that the IUE wants to
16 address economic matters as one package, how
17 can you infer from that what the IUE-CWA was
18 intending to convey is that they were -- they
19 would like "an agreement patterned on the
20 economics of any agreement reached between
21 Delphi and UAW" which is what you say in your
22 supplemental declaration dated May 23rd?
23 A. I think, as I stated before, the holiday
24 pay answer they gave us certainly indicates
25 pattern. And the fact that they elected not

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1 to give us a counteroffer on any of the
2 economic provisions of our proposal also
3 implies -- maybe I'm incorrect, but it implies
4 to me that they're going to wait.
5 Q. So, that's why you're affidavit uses the
6 word "indicates" rather than stating that IUE
7 told you that they were going to wait until a
8 UAW agreement?
9 A. I'd have to look at the document.
10 Q. All right. Well, never -- never mind.
11 Let me withdraw it. Now, your testimony is

12 that the IUE-CWA did not respond to any of the
13 economic portions of the March 24 GM
14 consensual proposal?

15 A. I don't recall saying that.

16 Q. Okay. Has -- then let me ask you that.
17 Has the IUE-CWA responded, counterproposed to
18 any of the economic terms set forth in the
19 March 24th GM consensual provision -- or
20 proposal?

21 A. Yes, they have.

22 Q. Okay. And those proposals are set forth
23 at -- as attached to your supplemental
24 declaration -- your second supplemental?

25 A. Correct.

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1 Q. Now, as things stand today, is it
2 accurate to state that the written proposal on
3 the table for the IUE-CWA is the March 24th GM
4 consensual proposal?

5 A. It's the November 15th proposal with an
6 addendum to it, which is the GM consensual
7 proposal.

8 Q. Let's do this by -- let's do it by days.
9 Is it fair to say that the March 24, 2006
10 proposal that was sent to the IUE-CWA remains
11 the company's proposal today as we testify?

12 A. Yes, sir.

13 Q. Delphi has not modified that proposal in
14 any way, correct?

15 A. We've attached an attrition addendum to
16 that proposal.

17 Q. Would you explain what you mean by
18 "attrition addendum"?
19 A. The March 24th proposal did not contain a
20 provision for attrition, retirement attrition,
21 and we've attached an addendum to the March
22 24th proposal which details our proposal on
23 attrition.
24 Q. All right. And that has been the subject
25 of a counterproposal by the IUE-CWA, correct?

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1 A. That's correct.
2 MR. KENNEDY: All right. I have no
3 further questions, Your Honor.
4 THE COURT: Okay. Any other
5 questions by the unions? Okay. No redirect?
6 All right. You can step down, sir.
7 MR. BUTLER: Your Honor, in looking
8 at the testimony for the balance of our three
9 remaining witnesses and while we appreciate
10 Your Honor's willingness on Memorial Day
11 weekend to stay here till as late as 7, we
12 don't think we can complete those witnesses in
13 that time period. We may complete one but
14 we're not sure we could complete the balance.
15 So, we've chatted with counsel about an
16 appropriate -- or, at least tried to -- I was
17 about to complete the conversation with --
18 when Your Honor came back on the bench, but we
19 think it's appropriate, having now just
20 completed the labor witnesses, if it's
21 acceptable to Your Honor, to break or do next

22 up on June 2nd. We have agreed with counsel
23 for the UAW which I believe is the first of
24 the unions to present witnesses under the meet
25 and confer that their witnesses would not be

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1 presented prior to the afternoon session on
2 June 2nd. So, if we -- we have three
3 witnesses to present in the morning. If it
4 turns out that everyone decides not to cross-
5 examine them, then we will end up having a
6 shorter morning session and we'll come back
7 for the afternoon session unless Mr. Simon is
8 ready to start earlier than that. But that
9 was our understanding and I wanted to place it
10 on the record.

11 THE COURT: Okay. That's fine. I
12 want to address just one thing. Mr. Levine
13 brought this up. Obviously, as bargaining
14 continues, counsel may feel inappropriate to
15 attach supplemental, supplemental,
16 supplemental affidavits describing the ongoing
17 bargaining and I'm not going to discourage
18 them from doing that because that's part of
19 their analysis of 1113 and 1114. However, I
20 would encourage you, if you think it's
21 productive, to discuss some means to save all
22 of that and to be introduced in some fashion
23 when you all think you're done so that people
24 can bargain with a little more assurance that
25 at least if they make a deal, or the interim

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1 steps will not be spread out on the record.
2 And that's something I'd encourage you all to
3 discuss. On the other hand, hearing the
4 echoes of all your discussions that makes
5 known may encourage you to expedite reaching a
6 deal. So, I'm not going to tell you to do it
7 but I think it's worth discussing.

8 MR. BUTLER: Your Honor --

9 THE COURT: So it really doesn't
10 necessarily have an iceberg effect on the
11 negotiations.

12 MR. BUTLER: Your Honor, on that
13 point, we will have some discussions with the
14 unions about that. I think that with our
15 labor witnesses now off the stand, they'll
16 provide an opportunity for that discussion.
17 We will need, I think, at the end of the
18 process, whenever that process does come to a
19 conclusion, if in fact we can't settle prior
20 to the coming of a conclusion, we are going to
21 need to refreshen the record in light of Your
22 Honor's rulings on that. I do want to
23 indicate to Your Honor that we have --

24 THE COURT: Yeah. The union's
25 negotiators are not done so -- and I don't

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1 necessarily want to put down if there's a way
2 around it that people can agree upon to the

3 burden of submitting four, five or six
4 supplemental affidavits every day after they
5 finish bargaining.
6 MR. BUTLER: Right. And, Your
7 Honor, on that point, I should also indicate
8 and we've had some informal discussions with a
9 number of the unions, principally with the
10 UAW. There are some discussions at the senior
11 levels of the organizations that have been
12 occurring that we have agreed will not be
13 introduced into this record. Because there is
14 a need for people to be able to have
15 conversations that they understand won't be a
16 part of this record period, and while that
17 puts obviously on the debtors perhaps some
18 risk, it's an appropriate balance. And I just
19 want the Court to understand we have that
20 understanding, for example with UAW, as to
21 some conversations with two of their senior
22 parties and we will not introduce those
23 conversations into the record.

24 THE COURT: Okay. All right. I
25 guess also on that topic, I wish you all a

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1 good holiday. I feel sorry that these people
2 are negotiating over weekends but I think,
3 given the importance of these issues, the
4 folks who have been doing that are to be
5 commended and we're not getting together again
6 for a while so I hope you guys continue to use
7 those days productively.

8 MR. BUTLER: Thank you, Your Honor.

9 THE COURT: Okay.

10 (Whereupon the proceedings were

11 concluded at 4:58 PM.)

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2 C E R T I F I C A T I O N

3

4 I, Pnina Eilberg, hereby certify that the
5 foregoing is a true and correct transcription,
6 to the best of my ability, of the sound
7 recorded proceedings submitted for
8 transcription in the matter of the bankruptcy
9 hearing of:
10 DELPHI CORPORATION.

11

12 I further certify that I am not employed
13 by nor related to any party to this action.

14

15 In witness whereof, I hereby sign this
16 date:
17 April 29, 2006.

18

19

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Pnina Eilberg

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